

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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SAM HADAWAY,

Plaintiff,

v.

Case No. 2:19-cv-01106-PP

CITY OF MILWAUKEE, et al.,

Defendants.

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## Exhibit 4

# BROWN & JONES REPORTING, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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SAM HADAWAY,

Plaintiff,

-vs-

Case No. 19-cv-1106

CITY OF MILWAUKEE, et al.,

Defendants.

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Video examination of CARL BUSCHMANN,  
taken at the instance of the Plaintiff, under and  
pursuant to the Federal Rules of Civil Procedure,  
before SAMANTHA J. SHALLUE, a Registered Professional  
Reporter and Notary Public in and for the State of  
Wisconsin, at Brown & Jones Reporting, Inc., 735  
North Water Street, Suite M185, Milwaukee, Wisconsin,  
on April 7, 2021, commencing at 10:11 a.m. and  
concluding at 4:19 p.m.

## 1                   A P P E A R A N C E S

2       LOEVY & LOEVY, by  
3       MS. HEATHER LEWIS DONNELL,  
3       311 North Aberdeen, 3rd Floor,  
3       Chicago, Illinois 60607,  
4       appeared on behalf of the Plaintiff.5       CITY OF MILWAUKEE,  
6       OFFICE OF CITY ATTORNEY, by  
6       MS. NAOMI E. GEHLING,  
7       200 East Wells Street, Room 800,  
7       Milwaukee, Wisconsin 53202,  
8       appeared on behalf of the Defendants.

## 9                   A L S O    P R E S E N T

10      MS. KRISTEN WILLIAMS, City of Milwaukee.  
10      MR. JON HANSEN, Videographer.

12                   \* \* \* \* \*

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## TRANSCRIPT OF PROCEEDINGS

10:11:37 2 THE VIDEOGRAPHER: Good morning. We  
10:11:38 3 are on the record. The time is 10:11. Today's  
10:11:43 4 date, April 7, 2021. This is Media No. 1 of  
10:11:47 5 the deposition of Carl Buschmann.

10:11:49 6 This deposition is being taken in the  
10:11:51 7 matter of Sam Hadaway versus City of Milwaukee,  
10:11:57 8 United States District Court for the Eastern  
10:11:58 9 District of Wisconsin, Case No. 19-cv-01106.

10:12:04 10 This deposition is taking place at  
10:12:08 11 735 Water Street, Milwaukee, Wisconsin.

10:12:11 12 My name is Jon Hansen, CLVS, and I'm  
10:12:15 13 the videographer with Brown & Jones.

10:12:18 14 At this time if counsel could state  
10:12:20 15 their appearance, after which our reporter will  
10:12:21 16 swear in the witness and we can proceed.

10:12:21 17 MS. DONNELL: Good morning. Heather  
10:12:23 18 Lewis Donnell, D-O-N-N-E-L-L, on behalf of the  
10:12:26 19 plaintiff, Sam Hadaway.

10:12:27 20 MS. GEHLING: Good morning.  
10:12:29 21 Assistant City Attorney Naomi Gehling, G, as in  
10:12:34 22 "girl," -E-H-L-I-N-G, on behalf of the  
10:12:36 23 defendants. With me today is Kristen Williams,  
10:12:40 24 regular spelling, my paralegal.

10:12:40 25 CARL BUSCHMANN, called as a witness

10:12:40 1 herein, having been first duly sworn on oath,  
10:12:48 2 was examined and testified as follows:  
10:12:48 3 EXAMINATION  
10:12:48 4 BY MS. DONNELL:  
10:12:51 5 Q Good morning, Mr. Buschmann. How are you?  
10:12:56 6 A Fine.  
10:12:57 7 Q I know you've been deposed before, but just for  
10:13:00 8 a reminder, if you don't understand one of my  
10:13:02 9 questions, please let me know. I'm happy to  
10:13:04 10 say it again or rephrase it, okay?  
10:13:06 11 A Okay.  
10:13:06 12 Q If I -- if you answer one of my questions, I'm  
10:13:08 13 going to assume that you understood it. Fair?  
10:13:10 14 A Fair.  
10:13:11 15 Q If at any point you need to take a break, let  
10:13:16 16 me know. I'm happy to accommodate that. I  
10:13:19 17 just ask that you answer any question that's  
10:13:22 18 pending before we take a break, okay?  
10:13:24 19 A Okay.  
10:13:24 20 Q All right. Did you meet with your attorney to  
10:13:29 21 prepare for your deposition today?  
10:13:30 22 A Yes.  
10:13:30 23 Q I don't want to know about the communications  
10:13:33 24 you had with her, but I'm going to ask you some  
10:13:35 25 questions about those meetings, okay?

10:13:37 1 A Sure.

10:13:38 2 Q Was there more than one meeting?

10:13:40 3 A No.

10:13:40 4 Q Who was present for the meeting you had other  
10:13:45 5 than you and Ms. Gehling?

10:13:49 6 A The paralegal.

10:13:50 7 Q Is that Ms. Williams who's also present here  
10:13:54 8 today?

10:13:54 9 A Yes. James DeValkenaere and Robert Simons.

10:14:02 10 Q When was the meeting that you had with  
10:14:05 11 Ms. Gehling, Ms. Williams, Mr. DeValkenaere,  
10:14:10 12 and Mr. Simons?

10:14:11 13 A A couple weeks ago.

10:14:12 14 Q How long was that meeting for?

10:14:17 15 A About an hour.

10:14:18 16 Q Where was it?

10:14:22 17 A In Gehling's office.

10:14:27 18 Q At the City Attorney's Office in Milwaukee?

10:14:30 19 A Yes.

10:14:30 20 Q During that approximately one-hour meeting that  
10:14:37 21 you had a couple weeks ago with Ms. Gehling and  
10:14:41 22 the other defendants and Ms. Williams, did you  
10:14:43 23 look at any documents?

10:14:44 24 A Yes.

10:14:45 25 Q What documents did you look at?

10:14:50 1 A I looked at Hadaway's statement that he gave to  
10:14:56 2 me, I looked at the statements he gave to the  
10:15:01 3 previous detectives, and some reports that were  
10:15:06 4 filed by other detectives regarding  
10:15:10 5 Mr. Hadaway.

10:15:10 6 Q The first document you mentioned, Mr. Hadaway's  
10:15:19 7 statement, was that a handwritten statement?

10:15:22 8 A Yes.

10:15:23 9 Q And was that in your handwriting?

10:15:24 10 A Yes.

10:15:25 11 Q Okay. Did you also look at your supplementary  
10:15:33 12 report that went along with the statement that  
10:15:35 13 Mr. Hadaway gave?

10:15:36 14 A No.

10:15:36 15 Q You also said that you looked at statements  
10:15:38 16 that Mr. Hadaway had provided to other  
10:15:41 17 detectives; is that right?

10:15:42 18 A Yes.

10:15:42 19 Q Were those handwritten statements?

10:15:45 20 A Yes.

10:15:46 21 Q Did you read any supplementary reports  
10:15:50 22 pertaining or correlating with those  
10:15:52 23 handwritten statements Mr. Hadaway provided to  
10:15:54 24 detectives prior to your interaction with him?

10:15:57 25 A No.

10:15:57 1 Q And then you mentioned some -- some police  
10:16:06 2 reports by other detectives; is that right?  
10:16:08 3 A Yes.  
10:16:09 4 Q Were those police reports -- well, strike that.  
10:16:15 5 Do you remember anything about who  
10:16:17 6 those reports were by or what they were  
10:16:20 7 documenting?  
10:16:20 8 A One was by Detective Cameo Barbian-Gayan, and  
10:16:29 9 the other one was Detective Katherine Hein.  
10:16:34 10 Q And with respect to the -- those are  
10:16:38 11 supplementary reports, both of them; is that  
10:16:41 12 right?  
10:16:41 13 A Yes.  
10:16:41 14 Q Regarding the first supplementary report that  
10:16:45 15 you reviewed at your meeting to prepare for  
10:16:47 16 your deposition by Cameo Barbian-Gayan, what  
10:16:50 17 subject matter did that report pertain to?  
10:16:52 18 A The statement that Hadaway had given to me.  
10:17:03 19 Q And how about the -- anything else that you  
10:17:10 20 remember about the supplementary report that  
10:17:14 21 Cameo Barbian had prepared?  
10:17:14 22 A She asked him about there possibly being a  
10:17:21 23 fourth person with them.  
10:17:22 24 Q And anything else you recall about that report?  
10:17:24 25 A No.

10:17:25 1 Q Okay. How about the one by Detective Katherine  
10:17:36 2 Hein? What do you recall about that  
10:17:37 3 supplementary report?  
10:17:39 4 A I know that was regarding Hadaway's meeting  
10:17:42 5 with Chaunte Ott's attorney and reviewing his  
10:17:47 6 statement to Milwaukee police detectives.  
10:17:53 7 Q Anything else?  
10:18:00 8 A No.  
10:18:01 9 Q Other than the handwritten statements you  
10:18:04 10 reviewed of Mr. Hadaway that you've identified  
10:18:07 11 and the supplementary report by Detective Cameo  
10:18:12 12 Barbian and Detective Hein, any other documents  
10:18:14 13 that you recall reviewing during your meeting  
10:18:17 14 with your attorney to prepare for your  
10:18:18 15 deposition today?  
10:18:19 16 A No.  
10:18:19 17 Q Did you review any of the statements provided  
10:18:26 18 by Mr. Richard Gwin?  
10:18:29 19 A No.  
10:18:29 20 Q Do you recall the individual by the name of  
10:18:34 21 Richard Gwin who was spoken to during the Payne  
10:18:37 22 investigation?  
10:18:38 23 A Yes.  
10:18:39 24 Q Did you review any of your deposition testimony  
10:18:52 25 that you gave in the Ott versus City of Chicago

10:18:56 1 [sic] civil case?

10:18:57 2 A I did not.

10:18:58 3 Q Did you look at any photographs from the Payne

10:19:03 4 homicide investigation?

10:19:04 5 A No.

10:19:05 6 Q Did you look at the medical examiner's report

10:19:11 7 or toxicology report?

10:19:13 8 A No.

10:19:13 9 Q Okay. Okay. The last time that I spoke to you

10:19:33 10 or met you was back in 2012, I believe, in the

10:19:38 11 Ott matter, and at that point you were employed

10:19:40 12 with the district attorney's office as an

10:19:43 13 investigator and had been for approximately

10:19:45 14 four years. Does that sound right to you?

10:19:47 15 A Yes.

10:19:47 16 Q Are you still employed as an investigator with

10:19:50 17 the district attorney's office?

10:19:51 18 A I am not.

10:19:52 19 Q When did you stop working for the district

10:19:55 20 attorney's office?

10:19:56 21 A I retired in March of 2018.

10:20:00 22 Q Are you employed in any capacity now?

10:20:06 23 A No.

10:20:06 24 Q So you're fully retired?

10:20:09 25 A Yes.

10:20:09 1 Q Did you work for the DA's office for about a  
10:20:22 2 ten-year period of time?  
10:20:24 3 A Just short of 12 years.  
10:20:26 4 Q Oh, just short of 12 years. Okay. And was  
10:20:33 5 that always in the capacity as an investigator?  
10:20:36 6 A Yes.  
10:20:37 7 Q I guess after 2012, what were your assignments  
10:20:49 8 in terms of units or special assignments with  
10:20:52 9 the district attorney's office as an  
10:20:54 10 investigator?  
10:20:55 11 A I was assigned to the witness protection unit.  
10:20:58 12 Q And were you part of the witness protection  
10:21:02 13 unit from 2012 till your retirement in 20- --  
10:21:04 14 March of 2018?  
10:21:06 15 A Yes.  
10:21:06 16 Q Okay. I'm going to briefly go over your  
10:21:19 17 employment history with the Milwaukee Police  
10:21:21 18 Department, okay?  
10:21:22 19 A Yes.  
10:21:22 20 Q You started as a police cadet or police intern?  
10:21:28 21 A Police aide.  
10:21:29 22 Q Police aide. I'm sorry. Different agencies  
10:21:32 23 have different terms for it, but basically you  
10:21:34 24 started at the age of, was it, 19?  
10:21:37 25 A 19.

10:21:37 1 Q And you had had family members as part of the  
10:21:41 2 department before you, right?  
10:21:42 3 A Yes.  
10:21:42 4 Q Was that your uncle and your cousin?  
10:21:44 5 A Yes.  
10:21:44 6 Q Any other family members that have been part of  
10:21:48 7 the Milwaukee Police Department other than you,  
10:21:50 8 your uncle, and your cousin?  
10:21:52 9 A No.  
10:21:52 10 Q Okay. And you served a total of 31 years with  
10:21:57 11 the Milwaukee Police Department; is that right?  
10:21:59 12 A Yes.  
10:22:00 13 Q And what was your date of being sworn in?  
10:22:06 14 A Well, when I first was hired it was August of  
10:22:15 15 1975.  
10:22:18 16 Q And that was as a police aide?  
10:22:20 17 A Yes.  
10:22:21 18 Q And then when you turned 21, you became a sworn  
10:22:24 19 officer?  
10:22:25 20 A Yes.  
10:22:25 21 Q So that would have been '77?  
10:22:26 22 A May of 1977.  
10:22:28 23 Q And I forget, is that before you went to the  
10:22:30 24 academy or after you went to the academy that  
10:22:32 25 you were sworn?

10:22:33 1 A I was sworn in both times, but when I was sworn  
10:22:37 2 in as a police officer, it was before the  
10:22:39 3 academy.

10:22:39 4 Q Okay. So you were sworn in in May 1977 and  
10:22:43 5 then you went to the police academy?

10:22:46 6 A Yes.

10:22:46 7 Q Okay. And that academy was here in Milwaukee;  
10:22:52 8 is that right?

10:22:52 9 A Yes.

10:22:53 10 Q Okay. And then you were part of the patrol  
10:22:59 11 division until you were promoted to the rank of  
10:23:01 12 detective in April 1991; is that right?

10:23:04 13 A Yes.

10:23:04 14 Q And you'll have to remind me. Did you have to  
10:23:10 15 take a test to become a detective at that time?

10:23:13 16 A Yes.

10:23:13 17 Q And you took the -- how many times did you take  
10:23:16 18 the test to become a detective?

10:23:18 19 A One time.

10:23:18 20 Q And then you retired at the rank of detective,  
10:23:25 21 correct?

10:23:25 22 A Yes.

10:23:26 23 Q And you never sought to -- did you ever seek to  
10:23:29 24 be promoted?

10:23:30 25 A No.

10:23:30 1 Q Okay. Now, your time at the Criminal  
10:23:43 2 Investigative Bureau -- that's the name for the  
10:23:46 3 detective division while you were there?  
10:23:48 4 A Yes.  
10:23:48 5 Q Okay. And is it -- did it -- was it called  
10:23:51 6 "CIB" for short?  
10:23:52 7 A Yes.  
10:23:52 8 Q Okay. So if I use the term "CIB," you'll know  
10:23:56 9 what I'm referring to?  
10:23:57 10 A Yes.  
10:23:58 11 Q Okay. Oh, what was your date of retirement?  
10:24:05 12 I'm sorry. I forgot to ask that.  
10:24:07 13 A June of 2006.  
10:24:09 14 Q Okay. Okay. So from April 1991 to June 2006,  
10:24:17 15 you were part of CIB, correct?  
10:24:20 16 A Yes.  
10:24:20 17 Q And you had -- it's fair to say you had various  
10:24:25 18 assignments within the units of CIB over that  
10:24:29 19 time period, right?  
10:24:30 20 A Yes.  
10:24:30 21 Q Okay. I would like to -- can you describe your  
10:24:32 22 assignments that you had from April 1991 till  
10:24:37 23 your retirement in June 2006 at CIB?  
10:24:40 24 A I was assigned to the violent crimes unit, the  
10:24:47 25 crimes against persons unit, and homicide.

10:24:50 1 Q And when were you assigned to -- was your first  
10:25:03 2 assignment violent crimes?

10:25:05 3 A My first assignment I would say was general  
10:25:08 4 duty. I was just learning the position.

10:25:12 5 Q And how long were you assigned to general duty  
10:25:18 6 at CIB?

10:25:19 7 A I don't recall.

10:25:23 8 Q Okay. How long were you assigned to the  
10:25:29 9 homicide unit?

10:25:31 10 A Off and on, about 11 years.

10:25:35 11 Q 11 years total, but not consecutive?

10:25:40 12 A Correct.

10:25:40 13 Q Okay. What was the first stint you did in the  
10:25:43 14 homicide unit of CIB?

10:25:45 15 A I don't recall the year. It was --

10:25:57 16 Q Oh, sorry. The Payne investigation was, you  
10:26:00 17 know, October 1995, and at that point you were  
10:26:03 18 a homicide detective, right?

10:26:05 19 A Yes.

10:26:06 20 Q Was that the first assignment -- time you were  
10:26:09 21 first assigned to homicide?

10:26:10 22 A I probably was there maybe a year before that.

10:26:15 23 Q Okay. So you may have been assigned around  
10:26:25 24 1994?

10:26:25 25 A Yes.

10:26:26 1 Q And do you remember how long you were at  
10:26:30 2 homicide during that first period of  
10:26:32 3 assignment?  
10:26:33 4 A A couple years.  
10:26:35 5 Q Like, two to three years?  
10:26:38 6 A Yes.  
10:26:38 7 Q Okay. And then where did you move after that?  
10:26:42 8 A I went to violent crimes.  
10:26:47 9 Q Can you identify for the record what kind of  
10:26:50 10 crimes violent crime detectives investigated?  
10:26:53 11 A We investigate non-fatal shootings, stabbings.  
10:27:01 12 Q Is that non-fatal stabbings?  
10:27:03 13 A Yes. We basically investigate the same things  
10:27:08 14 homicide would investigate, only that our  
10:27:11 15 victims survive.  
10:27:13 16 Q Is it accurate to say at this time period in  
10:27:18 17 the City of Milwaukee sexual assaults were  
10:27:20 18 assigned to the sensitive crime unit within  
10:27:24 19 CIB?  
10:27:24 20 A Yes.  
10:27:24 21 Q So violent crimes would not include crimes of  
10:27:27 22 sexual assault?  
10:27:28 23 A No.  
10:27:28 24 Q Okay. If there was a non-fatal crime that  
10:27:36 25 included a sexual assault, would it go to

10:27:39 1 violent crimes or sensitive crimes during this  
10:27:42 2 time period?

10:27:43 3 A The initial investigation may start with  
10:27:48 4 violent crimes, but I would say that it would  
10:27:52 5 eventually go to sensitive crimes.

10:27:54 6 Q Do you recall how long you were assigned to the  
10:28:01 7 violent crimes unit of CIB?

10:28:04 8 A A year.

10:28:06 9 Q Where did you go next?

10:28:11 10 A Crimes against persons.

10:28:13 11 Q What kind of crimes does the crimes against  
10:28:17 12 persons -- did the crimes against persons unit  
10:28:19 13 at CIB investigate when you were assigned  
10:28:22 14 there?

10:28:22 15 A My assignment was to the -- they called it the  
10:28:26 16 "holdup squad." We investigated bank  
10:28:29 17 robberies, armed robberies, street robberies,  
10:28:35 18 and that.

10:28:37 19 Q Thank you. Do you recall how long you were  
10:28:40 20 assigned to the crimes against persons unit?

10:28:42 21 A Two years.

10:28:48 22 Q Where did you go next?

10:28:50 23 A Back to homicide.

10:28:51 24 Q And was that for the last six years you were at  
10:28:56 25 homicide?

10:28:57 1 A There was a -- I went back to homicide for a  
10:29:06 2 couple years. Then I had a change of shift and  
10:29:10 3 went back to robberies. Then my last four  
10:29:14 4 years I finished in homicide.

10:29:15 5 Q And what shift did you finish in homicide?

10:29:20 6 A Day shift, 8:00 a.m. to 12:00 -- or 8:00 a.m.  
10:29:26 7 to 4:00 p.m.

10:29:28 8 Q Thank you. You had regular partners when you  
10:29:41 9 were assigned to CIB for -- or various regular  
10:29:44 10 partners during that time you worked as a  
10:29:47 11 detective at the Milwaukee Police Department,  
10:29:49 12 correct?

10:29:49 13 A Yes.

10:29:49 14 Q Can you identify some of your -- who your  
10:29:52 15 regular partners were?

10:29:53 16 A Kurt Sutter, Raymond Trudell, Gary Temp, and  
10:30:12 17 Jim DeValkenaere, Michael Wesolowski, and I  
10:30:24 18 believe my last partner was Thomas Fischer.

10:30:27 19 Q Thank you. When -- of the regular partners  
10:30:36 20 you've just identified, which ones of them did  
10:30:39 21 you work homicides with?

10:30:41 22 A Sutter, DeValkenaere, Temp, Wesolowski, and  
10:30:53 23 Fischer.

10:30:54 24 Q Okay. Are you still in communication with  
10:31:10 25 Michael Wesolowski, your former partner?

10:31:13 1 A He's deceased.

10:31:15 2 Q Oh, he is? I'm sorry to hear that.

10:31:18 3 A Thank you.

10:31:19 4 Q I deposed him. I met him in the Ott case. So

10:31:27 5 I'm sorry to hear that.

10:31:27 6 A Hm-hm.

10:31:29 7 Q How about Jim DeValkenaere? Are you still in

10:31:32 8 contact with him?

10:31:33 9 A No.

10:31:33 10 Q How about Gary Temp?

10:31:36 11 A No.

10:31:37 12 Q How about Kurt Sutter?

10:31:40 13 A Once a year we golf together.

10:31:43 14 Q I want to talk to you about the cold case

10:31:58 15 squad. Do you know what I'm talking about?

10:32:00 16 A Yes.

10:32:00 17 Q Okay. Can you define -- or how would you

10:32:04 18 describe the cold case squad?

10:32:06 19 A We would go through open homicides that had

10:32:14 20 come to a dead end and look at the cases and

10:32:19 21 see if there was anything else that may or

10:32:25 22 could have been done, and we would conduct

10:32:27 23 follow-up on those cases.

10:32:30 24 Q The -- the cold case squad, it came into

10:32:38 25 existence for the first time as part of the

10:32:41 1 detective -- well, strike that.

10:32:42 2 Was the cold case squad just

10:32:46 3 pertaining to homicides?

10:32:47 4 A Yes.

10:32:47 5 Q Okay. And when the cold case squad first came

10:32:50 6 into existence, that was right at or shortly

10:32:53 7 before the time of the Payne homicide in

10:32:54 8 October '95, right?

10:32:56 9 A Yes.

10:32:56 10 Q And you were one of the first members of that

10:32:59 11 cold case squad?

10:33:01 12 A Yes.

10:33:01 13 Q Along with Jim DeValkenaere?

10:33:03 14 A Yes.

10:33:03 15 Q Gary Temp?

10:33:04 16 A Yes.

10:33:04 17 Q And is it Eric Moore?

10:33:07 18 A Yes.

10:33:07 19 Q Okay. Was that the total of the first

10:33:11 20 iteration of the cold case squad?

10:33:12 21 A As I recall, yes.

10:33:14 22 Q How -- and is it fair to say that you were

10:33:16 23 assigned -- all of those four were assigned to

10:33:19 24 the -- detectives were assigned to the cold

10:33:21 25 case squad, but you would also have assignments

10:33:25 1 on active homicides that weren't cold  
10:33:28 2 simultaneously with your cold case assignments?  
10:33:31 3 A As I recall, if we were needed, we could go to  
10:33:34 4 other assignments, yes.  
10:33:34 5 Q Okay. But your involvement -- is it accurate  
10:33:36 6 to say that your involvement on the Payne  
10:33:38 7 homicide was you got assigned to it as part of  
10:33:42 8 your initial cold case investigations?  
10:33:45 9 A Yes, we -- we took on that case.  
10:33:48 10 Q Okay. Was that the first case you and Jim  
10:33:51 11 DeValkenaere took on as a cold case squad case?  
10:33:54 12 A I don't recall.  
10:33:55 13 Q Okay. But it was at least one of the very  
10:33:57 14 first?  
10:33:58 15 A Yes.  
10:33:58 16 Q Who -- sorry. Who determined or made the  
10:34:07 17 assignments to look into certain cold cases?  
10:34:11 18 Was it you as the detectives or one of your  
10:34:14 19 supervisors?  
10:34:14 20 A We -- we chose the cases we wanted to look at.  
10:34:18 21 Q So you, Jim DeValkenaere, Eric Moore, and Gary  
10:34:24 22 Temp would decide the cases you wanted to work  
10:34:27 23 on?  
10:34:27 24 A Yes.  
10:34:27 25 Q Okay. Would you have to get a supervisor's

10:34:30 1 approval?

10:34:31 2 A We would touch base with a supervisor to let

10:34:35 3 him know what we were doing.

10:34:37 4 Q I'm sorry. For the selection of what case you

10:34:40 5 were going to investigate as a cold case, did

10:34:43 6 you have to get a supervisor's sign-off?

10:34:47 7 A I wouldn't say we had to get a sign-off, no.

10:34:53 8 Q So it's fair -- is your testimony that you and

10:34:57 9 one of the other cold case squad detectives

10:35:01 10 could decide what cases you wanted to

10:35:02 11 investigate as a cold case and you would just

10:35:04 12 let your supervisor know; you didn't have to

10:35:06 13 get their approval?

10:35:07 14 A Correct.

10:35:07 15 Q Okay. In your previous deposition in the Ott

10:35:12 16 matter, you identified the captain of the

10:35:15 17 cold -- for the cold case squad to be Captain

10:35:21 18 Domagalski; is that right?

10:35:23 19 A Yes.

10:35:23 20 Q And you had identified the lieutenants as

10:35:27 21 Lieutenant Susik, Lieutenant Kane, and

10:35:30 22 Lieutenant Ardis. Does that sound right to

10:35:34 23 you?

10:35:34 24 A Yes.

10:35:35 25 Q Okay. Other than the Payne case, do you

10:35:43 1 remember any of the other cases you  
10:35:44 2 investigated as part of the cold case squad?  
10:35:48 3 A I really don't, no.  
10:35:49 4 Q Okay. Do you remember as you sit here today --  
10:35:52 5 and, again, it's a long time ago. I understand  
10:35:54 6 that. So if you don't remember, just let me  
10:35:57 7 know. But do you remember how long you were  
10:35:59 8 part of the cold case squad?  
10:36:01 9 A Maybe about a year.  
10:36:06 10 Q Did the squad keep existing after you left  
10:36:10 11 after that year and have other people assigned  
10:36:13 12 to it?  
10:36:14 13 A I don't recall.  
10:36:14 14 Q Okay. You previously testified that you and --  
10:36:20 15 well, I think you previously testified that you  
10:36:22 16 and Jim DeValkenaere were partners during that  
10:36:24 17 time period; is that right?  
10:36:25 18 A Yes.  
10:36:25 19 Q Okay. And was it that Gary Temp and Eric Moore  
10:36:30 20 worked together?  
10:36:32 21 A I don't recall if they worked together.  
10:36:37 22 Q Okay. Thank you. I think you previously  
10:36:41 23 testified that you and Jim DeValkenaere had  
10:36:45 24 worked on approximately four to five cases as  
10:36:48 25 cold cases. Does that sound right to you

10:36:51 1 still?

10:36:51 2 A I really don't recall.

10:36:52 3 Q Okay. You have no reason as you sit here today

10:36:55 4 to doubt your prior testimony, though?

10:36:57 5 A No, I don't.

10:36:57 6 Q Okay. I want to talk to you about what you

10:37:14 7 remember or don't remember about your

10:37:18 8 investigative work on the Payne homicide

10:37:20 9 investigation, but before I do, I want to have

10:37:22 10 an understanding of whether you have an

10:37:24 11 independent recollection of any of your

10:37:27 12 investigatory work on the Payne homicide. Do

10:37:30 13 you know what I mean when I say "independent

10:37:32 14 recollection"?

10:37:32 15 A Yes.

10:37:32 16 Q Okay. And what do you think I mean by it, or

10:37:36 17 what do you mean by it?

10:37:37 18 A As I sit here today, do I remember certain

10:37:41 19 events of that investigation.

10:37:42 20 Q Yes. Okay. And so do you have an independent

10:37:45 21 recollection of certain events in that

10:37:48 22 investigation?

10:37:48 23 A Yes.

10:37:48 24 Q Can you identify for me what events of the

10:37:52 25 Payne homicide you have an independent

10:37:54 1 recollection of?

10:37:56 2 A The investigation involving Richard Gwin, Sam

10:38:04 3 Hadaway, and Chaunte Ott.

10:38:11 4 Q Okay. Before you reviewed the records a couple

10:38:16 5 weeks ago pertaining to Mr. Hadaway's statement

10:38:18 6 to you, did you have an independent

10:38:21 7 recollection before you reviewed those

10:38:22 8 documents?

10:38:24 9 A Limited.

10:38:25 10 Q Did reviewing the documents refresh your

10:38:27 11 recollection?

10:38:28 12 A Yes.

10:38:29 13 Q The -- you didn't review any documents

10:38:33 14 pertaining to Richard Gwin a couple weeks ago

10:38:37 15 getting ready for your deposition. So do

10:38:39 16 you -- as you sit here today, you have a

10:38:41 17 recollection of some of your involvement with

10:38:43 18 Richard Gwin?

10:38:45 19 A Yes.

10:38:45 20 Q Okay. And then did you -- I don't think you

10:38:48 21 identified any documents pertaining to Mr. Ott

10:38:50 22 that you looked at a couple weeks ago; is that

10:38:53 23 right?

10:38:53 24 A I did not look at anything pertaining to

10:38:55 25 Mr. Ott.

10:38:55 1 Q Okay. But as you sit here today, you have an  
10:38:58 2 independent recollection of some of your  
10:39:00 3 interactions with Mr. Ott?  
10:39:01 4 A Yes.  
10:39:02 5 Q Okay. Let's start with Mr. Gwin. What do you  
10:39:10 6 have an independent recollection of regarding  
10:39:12 7 your involvement with Mr. Gwin during the Payne  
10:39:16 8 homicide investigation?  
10:39:17 9 A That there was a person who came forward  
10:39:26 10 indicating that a subject by the name of Cortez  
10:39:33 11 had a girl with him and he was going to sell  
10:39:38 12 her. I guess it was a white girl, and he was  
10:39:43 13 going to sell her. And it was around the time  
10:39:47 14 when Jessica Payne -- the Jessica Payne  
10:39:54 15 investigation was going on.  
10:39:57 16 So we attempted to identify the  
10:40:01 17 person Cortez who subsequently ended up being  
10:40:07 18 Richard Gwin, and we brought him down for  
10:40:15 19 questioning. And at one point during the  
10:40:19 20 questioning, he gave a statement that he was  
10:40:22 21 with Sam Hadaway, Chaunte Ott, and a white girl  
10:40:28 22 in his car, that they bought and smoked some  
10:40:33 23 weed, that they ended up on 7th and Burleigh,  
10:40:38 24 in that area, that Chaunte Ott and Sam Hadaway  
10:40:43 25 left with the girl and walked behind a house,

10:40:47 1 and that he remained in the car smoking his  
10:40:51 2 weed. And then at one point Hadaway and Ott  
10:40:57 3 returned to the car without the girl and that  
10:41:00 4 he drove off with them, and he eventually drove  
10:41:06 5 them to Hadaway's house and dropped them off.

10:41:08 6 Q Okay. And what you've just testified to, you  
10:41:14 7 have an independent recollection of that  
10:41:16 8 statement Mr. Gwin gave to you and your  
10:41:20 9 partner, James DeValkenaere, independent of any  
10:41:23 10 document?

10:41:25 11 A Yes.

10:41:25 12 Q How is it that you have that memory?

10:41:31 13 A When I read Hadaway's statement, it refreshed  
10:41:37 14 my recollection.

10:41:38 15 Q Okay. So prior to reading Mr. Hadaway's  
10:41:42 16 written statement that you and your partner,  
10:41:45 17 James DeValkenaere, obtained from him, you  
10:41:47 18 didn't have a detailed memory of the statement  
10:41:51 19 Mr. Gwin had provided to you, correct?

10:41:54 20 A Right.

10:41:54 21 Q Okay. Do you recall that Mr. Gwin -- you had  
10:41:59 22 two interviews with Mr. Gwin?

10:42:02 23 A I don't recall that. I don't know how many  
10:42:05 24 times we talked to him.

10:42:06 25 Q Okay. As you sit here today, do you have an

10:42:11 1 independent recollection of any of the  
10:42:13 2 circumstances on how Mr. Gwin came to CIB to be  
10:42:18 3 interviewed by you and your partner?  
10:42:21 4 A We brought him to -- or no. No, I don't  
10:42:25 5 remember.  
10:42:25 6 Q Okay. I want to go back before I -- well,  
10:42:48 7 strike that.  
10:42:48 8 Before I move forward, have you told  
10:42:52 9 me everything that is your independent memory  
10:42:55 10 as you sit here today of your interactions with  
10:42:56 11 Richard Gwin?  
10:42:57 12 A Yes.  
10:42:57 13 Q Okay. Do you remember how old Mr. Gwin was at  
10:43:03 14 the time that you were interrogating him in the  
10:43:07 15 Payne homicide investigation?  
10:43:08 16 A I do not recall.  
10:43:10 17 Q As you sit here today, do you have a memory of  
10:43:18 18 whether Mr. Gwin was in your -- was in what was  
10:43:22 19 a custodial interrogation at the time he gave  
10:43:25 20 the statement that you recall him giving?  
10:43:32 21 A I don't recall.  
10:43:33 22 Q I want to backtrack for just a minute back to  
10:43:39 23 when you and James DeValkenaere decided to take  
10:43:43 24 on the Payne homicide investigation as one of  
10:43:45 25 the first cold cases you were going to

10:43:49 1 investigate, okay?

10:43:50 2 A Okay.

10:43:50 3 Q Was that your decision or James's decision or

10:43:54 4 both of your decisions to investigate it as a

10:43:57 5 cold case?

10:43:58 6 A Jim had worked on that case previously in

10:44:02 7 regular homicide and wanted to revisit the

10:44:07 8 case.

10:44:08 9 Q Did you support him in that or agree with his

10:44:16 10 decision to take it on as a cold case?

10:44:19 11 A Yes.

10:44:19 12 Q I guess by the very nature of it being worked

10:44:29 13 up as a cold case, the case had gone cold,

10:44:32 14 right?

10:44:34 15 A It wasn't your typical cold case. It was only

10:44:38 16 a couple months old, but Jim knew there was

10:44:43 17 some follow-up that needed to be done that

10:44:46 18 hadn't been done, and he wanted to look into

10:44:48 19 that.

10:44:49 20 Q But at the -- is it fair to say that at the

10:44:57 21 time that you and Jim took it on as a cold case

10:45:00 22 there were not any active leads being

10:45:02 23 investigated by the homicide unit?

10:45:04 24 A To my knowledge, yes.

10:45:05 25 Q Okay. And so in that regard, there weren't any

10:45:10 1                   suspects being actively investigated, correct?

10:45:13 2     A    No.

10:45:13 3     Q    And at that point there weren't -- wasn't any

10:45:17 4                   physical evidence that was being followed up

10:45:21 5                   on, either, right?

10:45:23 6     A    What do you mean by "physical evidence"?

10:45:24 7     Q    Like, there was no physical evidence that still

10:45:27 8                   needed to be tested or analyzed that was --

10:45:29 9                   everything had sort of been done up until that

10:45:32 10                  point?

10:45:32 11     A    I don't recall.

10:45:33 12     Q    Okay. Do you recall, as you sit here today,

10:45:45 13                  what the follow-up information -- or, sorry,

10:45:50 14                  strike that. That was a bad question.

10:45:52 15                  Do you recall, as you sit here today,

10:45:54 16                  what Jim DeValkenaere wanted to follow up on

10:45:57 17                  with respect to the Payne homicide

10:46:00 18                  investigation?

10:46:00 19     A    The -- trying to identify and locate the person

10:46:03 20                  named Cortez.

10:46:04 21     Q    Do you recall, as you sit here today, why Jim

10:46:08 22                  DeValkenaere wanted to try and identify and

10:46:12 23                  locate the person named Cortez?

10:46:14 24     A    No.

10:46:17 25     Q    When you testified earlier in the Ott case in

10:46:29 1 your deposition in that case, you indicated  
10:46:31 2 that you read all of the reports in the Payne  
10:46:35 3 homicide investigation when you first got  
10:46:37 4 involved as a cold case. Do you remember that  
10:46:39 5 testimony?

10:46:39 6 A Yes.

10:46:40 7 Q Okay. And is that true?

10:46:41 8 A Yes.

10:46:42 9 Q Okay. So before -- is that true that before  
10:46:45 10 you took any steps and went out and tried to  
10:46:48 11 find Cortez you reviewed the M file as it  
10:46:52 12 existed at that time?

10:46:53 13 A Yes.

10:46:53 14 Q Okay. And why did you do that?

10:46:56 15 A So I was up to speed on the case and that I was  
10:47:00 16 familiar with the case.

10:47:01 17 Q Okay. Do you have an independent recollection  
10:47:11 18 as you sit here today of the facts of Jessica  
10:47:15 19 Payne's homicide?

10:47:19 20 A Very limited.

10:47:20 21 Q Okay. What -- what is your limited memory of  
10:47:23 22 that homicide?

10:47:24 23 A That Jessica Payne was a runaway from South  
10:47:29 24 Milwaukee, that she ended up on the north side  
10:47:33 25 of Milwaukee where she was staying in a drug

10:47:38 1 house, that her body was found behind a vacant  
10:47:46 2 house either on a mattress or under a mattress,  
10:47:53 3 and that her throat had been slashed.

10:47:56 4 Q Anything else?

10:47:59 5 A No.

10:47:59 6 Q Do you recall the -- there had also been  
10:48:22 7 evidence of prostitution in the house where  
10:48:26 8 Ms. Payne was staying?

10:48:27 9 A Yes.

10:48:33 10 Q Okay. And do you have an independent  
10:48:38 11 recollection as you sit here today whether you  
10:48:41 12 and your partner, Jim DeValkenaere, also were  
10:48:45 13 investigating Ms. Payne's homicide as a  
10:48:48 14 possible sexual assault as well as a homicide?

10:48:56 15 A No.

10:48:58 16 Q Okay. Meaning "No," you do not recall, or  
10:49:03 17 "No," you did not investigate it as a sexual  
10:49:06 18 assault?

10:49:06 19 A We wouldn't have investigated the sexual  
10:49:11 20 assault.

10:49:11 21 Q Why not?

10:49:12 22 A That would have already been done during the  
10:49:15 23 initial investigation.

10:49:16 24 Q But in your review of your -- the records, you  
10:49:23 25 would have reviewed that a sexual assault kit

10:49:25 1 was collected from Ms. Payne, right?

10:49:28 2 A Yes.

10:49:28 3 Q And do you remember -- you don't remember

10:49:33 4 the -- well, do you remember now whether her

10:49:37 5 body was found clothed or partially clothed?

10:49:40 6 A Partially clothed.

10:49:42 7 Q Do you remember how she was partially clothed?

10:49:46 8 A Her shirt was pulled up, and her pants were

10:49:51 9 pulled down.

10:49:52 10 Q Okay. Did your review of the way in which

10:50:04 11 Ms. Payne's body was found indicate to you that

10:50:07 12 there was a possibility she had been the victim

10:50:09 13 of a sexual assault or an attempted sexual

10:50:12 14 assault?

10:50:12 15 A Definitely could have been.

10:50:15 16 Q Do you also have a memory of the medical

10:50:28 17 examiner identifying an unidentified white

10:50:32 18 substance in her vagina?

10:50:41 19 A Yes.

10:50:41 20 Q Okay. I believe you also testified in your

10:51:00 21 prior deposition in the Ott case that in

10:51:03 22 addition to reading the police reports, you

10:51:05 23 also would have read the medical -- you did

10:51:08 24 read the medical examiner's report before your

10:51:11 25 involvement in investigating the Payne

10:51:12 1 homicide. Is that -- do you remember that?

10:51:17 2 A Yes.

10:51:17 3 Q Okay. And why would you read the medical

10:51:20 4 examiner's report?

10:51:21 5 A It's all part of the file, and I read the whole

10:51:25 6 file.

10:51:25 7 Q Okay. When you became a detective in the

10:51:39 8 Milwaukee Police Department in April 1991, did

10:51:42 9 you go to a detective training academy for some

10:51:45 10 portion of time before being -- working as a

10:51:48 11 detective?

10:51:49 12 A Yes.

10:51:49 13 Q How long was the detective academy back in

10:51:53 14 1991?

10:51:53 15 A It was 80 hours.

10:51:56 16 Q Was it 80 hours classroom?

10:51:59 17 A Yes.

10:51:59 18 Q Was that conducted here in Milwaukee?

10:52:02 19 A Yes.

10:52:03 20 Q Were you given training on how to conduct

10:52:07 21 interrogations of suspects?

10:52:13 22 A No.

10:52:13 23 Q Were you given any training on how to interview

10:52:18 24 suspects?

10:52:20 25 A No.

10:52:20 1 Q Were you given any training on how to take a  
10:52:25 2 statement from a witness or suspect?

10:52:29 3 A No.

10:52:29 4 Q Do you remember the subject matter of any of  
10:52:38 5 the 80 hours of training you were provided when  
10:52:40 6 you were promoted to a detective by the  
10:52:42 7 Milwaukee Police Department?

10:52:43 8 A Yes.

10:52:46 9 Q What subject matters do you recall being  
10:52:49 10 trained on?

10:52:50 11 A It was crime scene investigations on various  
10:52:57 12 crimes. They set up scenarios for homicides  
10:53:02 13 and robberies and arson. So it was how to  
10:53:09 14 conduct a crime scene investigation.

10:53:11 15 Q Anything else that you recall?

10:53:16 16 A No.

10:53:17 17 Q Did they provide any training on how to prepare  
10:53:21 18 reports as a detective?

10:53:25 19 A As a police officer, I already knew how to  
10:53:28 20 prepare reports and how to conduct interviews,  
10:53:30 21 and they didn't provide that specially, no.

10:53:37 22 Q Okay. Is it fair to say during this time  
10:53:40 23 period as a detective, the reports would be  
10:53:43 24 dictated and called in on a phone line and then  
10:53:46 25 there'd be a stenographer to type it up and

10:53:48 1 send it back typed up for the detective to  
10:53:50 2 review?

10:53:50 3 A Yes.

10:53:50 4 Q But that wasn't true on patrol; is that right?

10:53:53 5 A No.

10:53:53 6 Q Patrol you just wrote your own reports?

10:53:56 7 A Correct.

10:53:56 8 Q Okay. So at the detective academy they didn't  
10:53:59 9 give you any training on how to dictate  
10:54:01 10 reports?

10:54:02 11 A No, not that I recall.

10:54:04 12 Q That was something you learned on the job once  
10:54:07 13 you got your assignment?

10:54:08 14 A Yes.

10:54:08 15 Q Okay. Once you're on the job and you got  
10:54:11 16 assigned -- well, strike that.  
10:54:14 17 Do you remember who told you how to  
10:54:16 18 dictate your reports as a detective?

10:54:17 19 A No.

10:54:17 20 Q Were you given any training on the job about  
10:54:21 21 what you were supposed to do with the notes you  
10:54:24 22 took that were turned into a supplementary  
10:54:27 23 report dictated through the phone line that  
10:54:30 24 then came back to you?

10:54:31 25 A Was I told what to do with my --

10:54:34 1 Q Yes.

10:54:35 2 A No.

10:54:35 3 Q What did you do with your -- well, is it fair

10:54:40 4 to say you used to take notes on, like, a steno

10:54:40 5 pad or some other pad when you were out in the

10:54:42 6 field as a detective?

10:54:43 7 A Yes.

10:54:43 8 Q And that was true when you were a homicide

10:54:45 9 detective?

10:54:46 10 A Yes.

10:54:46 11 Q Did you ever take notes as a homicide detective

10:54:48 12 in one of your department-issued memo books?

10:54:51 13 A No.

10:54:51 14 Q Did you use your memo book as a patrol officer?

10:54:55 15 A Yes.

10:54:55 16 Q Okay. So once you became a detective, you no

10:54:58 17 longer used memo books?

10:55:00 18 A No.

10:55:01 19 Q Did other detectives use memo books?

10:55:03 20 A I don't recall.

10:55:04 21 Q Okay. But your practice was to take notes on a

10:55:07 22 steno pad; is that right?

10:55:08 23 A Yes.

10:55:08 24 Q Okay. What was your practice with respect to

10:55:12 25 keeping those notes?

10:55:14 1 A If I conducted an interview, I would call a  
10:55:21 2 report in based off my notes. After the report  
10:55:27 3 was typed, I reviewed it for its accuracy, and  
10:55:31 4 if it was accurate and consistent with my  
10:55:33 5 notes, then I destroyed the notes.

10:55:35 6 Q And were you ever given any instruction one way  
10:55:42 7 or the other about maintaining notes as a  
10:55:44 8 detective?

10:55:45 9 A No.

10:55:45 10 Q What if you had to -- a report came back once  
10:55:52 11 it had been written up by the stenographer and  
10:55:54 12 you needed to make changes? What -- how did  
10:55:56 13 you do that?

10:55:57 14 A I would go down and talk to the stenographer in  
10:56:01 15 person, point out where changes needed to be  
10:56:05 16 made. They would make the changes, I'd review  
10:56:08 17 them for the accuracy, and then I would keep  
10:56:10 18 that report as the report of record.

10:56:12 19 Q Okay. When you said you would keep the report  
10:56:15 20 as the report of record, would you keep a  
10:56:17 21 personal copy, or it would go in the file?

10:56:20 22 A It would go in the file.

10:56:21 23 Q Were -- were the detectives responsible for  
10:56:22 24 turning it into the admin to get it in the  
10:56:25 25 file?

10:56:28 1 A We would review the reports and place them in  
10:56:33 2 a -- a tray where a clerk would file them.  
10:56:35 3 Q Okay. Would the -- would you have to place  
10:56:38 4 them in a tray for a supervisor to sign off on  
10:56:41 5 them first?  
10:56:41 6 A Yes.  
10:56:41 7 Q And then you'd have to put them in another tray  
10:56:44 8 for the clerk to file once they were signed off  
10:56:47 9 on?  
10:56:47 10 A The supervisor would put them in so that they  
10:56:50 11 could be filed.  
10:56:50 12 Q Okay. So the detectives didn't put them in the  
10:56:54 13 basket for the clerk to file; they put them in  
10:56:57 14 the basket for the supervisor to sign off?  
10:56:59 15 A I don't recall.  
10:56:59 16 Q Okay. When you went to review -- do you have a  
10:57:04 17 memory as you sit here today of reviewing the  
10:57:07 18 Payne file when you first took it on as a cold  
10:57:10 19 case?  
10:57:10 20 A Independent memory of looking at the file? No.  
10:57:12 21 Q Okay. But based on your memory of -- general  
10:57:17 22 memory of what happened back then, if you  
10:57:19 23 wanted to review an M file when you were a  
10:57:22 24 homicide detective, what would you do to obtain  
10:57:24 25 the file to look at it?

10:57:25 1 A Pull the file off the shelf and look at it.

10:57:30 2 Q Could a detective just go into the room with a

10:57:34 3 murder file -- do you call them "M files," or

10:57:37 4 do you call --

10:57:37 5 A "M file."

10:57:38 6 Q "M file." And "M file" meant "murder file"?

10:57:40 7 A Yes.

10:57:40 8 Q If you wanted to get an M file and look at it,

10:57:44 9 could you just go as a homicide detective and

10:57:47 10 pull it off a shelf, or did you have to check

10:57:49 11 it out from the clerk?

10:57:50 12 A If you were going to remove it from the CIB,

10:57:53 13 you needed to sign it out.

10:57:55 14 Q Okay. Did you ever take M files into the

10:57:58 15 field, like sign them out to take them into the

10:58:01 16 field?

10:58:01 17 A No.

10:58:01 18 Q Would you sign them out to take an M file over

10:58:05 19 to the DA's office for a charging conference?

10:58:09 20 A Yes.

10:58:09 21 Q Or for court?

10:58:10 22 A Yes.

10:58:10 23 Q Okay. Otherwise, if you were going to look at

10:58:12 24 an M file, you did it in the CIB bureau?

10:58:15 25 A Yes.

10:58:15 1 Q I think I said "CIB." CID bureau.

10:58:22 2 Okay. Did you -- I think you just

10:58:41 3 said you never used your memo book as a

10:58:44 4 detective; is that right?

10:58:46 5 A Correct.

10:58:46 6 Q But you maintained your memo books from when

10:58:49 7 you were on patrol for your entire career as a

10:58:51 8 Milwaukee Police Department officer?

10:58:54 9 A After I got promoted, I -- when I retired,

10:59:04 10 that's when all my memo books and everything

10:59:09 11 were destroyed.

10:59:10 12 Q Your memo books and everything? What else

10:59:13 13 was -- did you destroy other than the memo

10:59:15 14 books?

10:59:15 15 A My memo books.

10:59:16 16 Q Okay. And you burnt them, right?

10:59:18 17 A Yes.

10:59:18 18 Q Where did you burn them?

10:59:20 19 A In a fire.

10:59:23 20 Q Where was the fire?

10:59:26 21 A In my backyard.

10:59:27 22 Q Okay. How long after your retirement did you

10:59:30 23 burn your memo books?

10:59:32 24 A I don't recall. It was recently after I

10:59:40 25 retired.

10:59:41 1 Q Okay. Do you need a break, or are you okay?

10:59:53 2 A I'm okay.

10:59:54 3 Q Okay. I believe you just testified that you

11:00:05 4 did not receive any training with respect to

11:00:08 5 interviewing witnesses or suspects or

11:00:11 6 interrogations at the detective academy when

11:00:14 7 you were promoted, true?

11:00:16 8 A Not that I can recall.

11:00:17 9 Q Okay. But you did receive some of that

11:00:20 10 training back at the original police academy

11:00:23 11 when you attended?

11:00:25 12 A Yes.

11:00:25 13 Q Okay. Do you recall any of the substance that

11:00:30 14 you were provided as a cadet at the academy

11:00:35 15 with respect to how to interview suspects?

11:00:38 16 A No.

11:00:38 17 Q How about with respect to interrogation skills

11:00:41 18 or techniques?

11:00:42 19 A Not that I can recall.

11:00:43 20 Q Do you recall any in-service trainings you

11:00:46 21 received with respect to interrogation

11:00:48 22 techniques?

11:00:49 23 A No.

11:00:49 24 Q Were you ever sent to an outside training?

11:00:56 25 A No.

11:00:56 1 Q Do you know the term "Reid technique" from John  
11:01:04 2 Reid & Associates?

11:01:05 3 A I've heard that, yes.

11:01:06 4 Q Did you get any training in the Reid technique  
11:01:10 5 of interrogations while you were an officer  
11:01:12 6 with the Milwaukee Police Department?

11:01:13 7 A No.

11:01:15 8 Q Were you provided any on-the-job training when  
11:01:22 9 you were promoted to detective on how to  
11:01:24 10 conduct interrogations?

11:01:27 11 A Yes.

11:01:27 12 Q Do you remember any of the officers or  
11:01:30 13 detectives that trained you?

11:01:31 14 A No.

11:01:31 15 Q Do you remember anything that you were told on  
11:01:34 16 the job about how to conduct interrogations?

11:01:37 17 A Not that I recall.

11:01:39 18 Q Do you recall any of the -- do they call them  
11:01:47 19 "general orders" up here? I forget. I use the  
11:01:49 20 Chicago term. What are the orders called that  
11:01:53 21 direct Milwaukee Police Department's -- the  
11:01:58 22 directives or the orders that direct your  
11:02:00 23 officers' conduct? Do you have a name for  
11:02:03 24 that? Like, the policies and procedures?

11:02:06 25 A Rules and regulations.

11:02:07 1 Q Rules and regulations. Okay. I'm sorry. I  
11:02:10 2 was using the Chicago term.

11:02:12 3 Do you remember, as you sit here  
11:02:14 4 today, any of the Milwaukee Police Department's  
11:02:16 5 rules and regulations pertaining to  
11:02:19 6 interrogations?

11:02:20 7 A No.

11:02:20 8 Q How about any of the rules and regulations  
11:02:23 9 pertaining to custodial interrogations?

11:02:26 10 A No.

11:02:26 11 Q Okay. So back to your training, you don't  
11:02:37 12 remember any of the detectives who trained you  
11:02:39 13 on interrogation skills or techniques, and did  
11:02:42 14 I ask you, do you remember anything of the  
11:02:45 15 substance you were taught?

11:02:46 16 A And I don't -- I do not recall.

11:02:48 17 Q Okay. As a homicide detective, did you have a  
11:03:21 18 personal practice in how you conducted  
11:03:24 19 interrogations of possible suspects with  
11:03:26 20 respect to how you -- well, strike that. Let  
11:03:31 21 me try again.

11:03:31 22 When you were a homicide detective  
11:03:36 23 with the Milwaukee Police Department, did you  
11:03:40 24 have a personal practice with respect to how  
11:03:42 25 you treated non-public facts about the homicide

11:03:47 1 when you were interrogating suspects?

11:03:52 2 A I don't understand the question.

11:03:53 3 Q Thanks for letting me know. It maybe wasn't

11:03:57 4 clear. Do you understand the phrase

11:03:58 5 "non-public facts"?

11:04:02 6 A No.

11:04:02 7 Q No. Okay. So you know when you're

11:04:05 8 investigating a homicide, there's details about

11:04:07 9 how the crime occurred -- maybe the weapon

11:04:09 10 used, where the injuries are on the body, where

11:04:11 11 the body was found -- that isn't reported in

11:04:15 12 the news or generally known. I'm referring to

11:04:17 13 that as, like, a non-public fact, something

11:04:19 14 that only the investigators and the perpetrator

11:04:26 15 would know.

11:04:27 16 A Okay.

11:04:27 17 Q Do you understand what I'm saying now?

11:04:29 18 A Yes.

11:04:29 19 Q So, for example, if you're an investigating a

11:04:33 20 homicide of a missing person and you're

11:04:38 21 interrogating a suspect and the suspect can

11:04:40 22 take you to the body, that's good evidence that

11:04:43 23 that's the perpetrator, right?

11:04:45 24 A Yes.

11:04:45 25 Q Okay. Similarly, if you're interrogating

11:04:50 1 somebody and they know a specific detail about  
11:04:53 2 injuries to the victim or something about the  
11:04:55 3 crime scene, that helps the investigator  
11:04:59 4 understand that this is the -- the suspect  
11:05:01 5 they're interrogating is the perpetrator,  
11:05:03 6 right?

11:05:03 7 A Yes.

11:05:04 8 Q So did you have a practice with respect to how  
11:05:06 9 you treated non-public facts in the context of  
11:05:10 10 your interrogation of a suspect in a homicide?

11:05:13 11 A I would keep them private.

11:05:18 12 Q And why would you keep them private?

11:05:23 13 A If I was conducting an interrogation, I would  
11:05:26 14 want to hear it from the person I'm  
11:05:28 15 interrogating.

11:05:31 16 Q Did you make efforts to try and determine what  
11:05:36 17 facts were known in the public either through  
11:05:38 18 the news or through people who had found a  
11:05:42 19 victim and it was generally known in the  
11:05:44 20 neighborhood, would you try and figure out what  
11:05:46 21 was sort of known and not known?

11:05:48 22 A I'm sorry, again I don't understand.

11:05:50 23 Q Oh, I'm sorry. That's a bad question. Thank  
11:05:52 24 you. I'm sorry. Did you ever make any effort  
11:05:55 25 to try and determine what facts were known

11:05:57 1 publicly either because reported in the news or  
11:05:59 2 known in the neighborhood where the crime  
11:06:01 3 occurred and those that were truly non-public  
11:06:06 4 facts, known only to the investigators and the  
11:06:09 5 perpetrator?

11:06:09 6 A Now, we're talking the Payne homicide?

11:06:11 7 Q I was talking in general, but -- I was talking  
11:06:16 8 in general.

11:06:17 9 A In general?

11:06:17 10 Q Yep.

11:06:19 11 A Could you repeat the question again?

11:06:22 12 Q Yeah, no problem. I'm -- I'm sorry that  
11:06:25 13 they're not clear. I think that's my fault.  
11:06:28 14 Did you have a general practice with respect to  
11:06:30 15 when you were interrogating a suspect in a  
11:06:33 16 homicide investigation to try and determine  
11:06:36 17 before you interrogated the suspect what facts  
11:06:38 18 were known publicly about the crime and what  
11:06:41 19 weren't known publicly about the crime?

11:06:44 20 A Yes.

11:06:44 21 Q And why would you do that?

11:06:46 22 A So that you would have knowledge of the crime  
11:06:55 23 and you -- I would not share that knowledge  
11:06:57 24 with the person I was interrogating because I  
11:07:01 25 would want to hear it from that person. If

11:07:02 1 they did have knowledge, I wanted to hear it  
11:07:05 2 from them.

11:07:06 3 Q Would you ever use a non-public fact to test  
11:07:11 4 whether the suspect had knowledge or not?

11:07:13 5 Would you ever do that in the context of an  
11:07:15 6 interrogation?

11:07:16 7 A Yes.

11:07:18 8 Q So sometimes you would use a non-public fact to  
11:07:20 9 try and tease out whether the person had  
11:07:24 10 knowledge or not?

11:07:25 11 A I'm allowed to, yes.

11:07:26 12 Q Okay. So is it fair you sometimes did that  
11:07:33 13 from time to time?

11:07:33 14 A I don't recall how many times.

11:07:35 15 Q I'm just saying sometimes -- you did do that on  
11:07:38 16 occasion, correct?

11:07:41 17 A I don't recall.

11:07:44 18 Q I'm not asking how many times you did it; I'm  
11:07:47 19 just saying your testimony is that you  
11:07:49 20 occasionally would use a non-public fact in the  
11:07:52 21 context of an interrogation to try and  
11:07:54 22 determine whether the person was a perpetrator  
11:07:56 23 or not?

11:07:57 24 A I recall that I could. I do not recall if I  
11:08:03 25 did or when I did.

11:08:04 1 Q How do you recall that you could do that?

11:08:07 2 A I'm allowed to use trickery when talking to a

11:08:14 3 person that I'm interrogating.

11:08:15 4 Q Okay. And what -- when you use the term

11:08:23 5 "trickery," was that ever defined for you, what

11:08:29 6 you could do and what you couldn't do?

11:08:31 7 A When would -- when would it have been defined

11:08:40 8 to me?

11:08:40 9 Q Yeah, or was it ever defined to you, like, what

11:08:44 10 are some tools you can use as trickery that

11:08:46 11 were permissible. You're saying that you

11:08:51 12 were -- you recall that you could do that, that

11:08:51 13 you were allowed to use trickery when you were

11:08:51 14 interrogating a person, and I was just asking

11:08:52 15 you to define what you mean by "trickery."

11:08:54 16 A Giving them facts that were not necessarily

11:09:01 17 true.

11:09:06 18 Q So you could give false facts?

11:09:08 19 A Yes.

11:09:13 20 Q Could you also use non-public facts that were

11:09:20 21 known about the crime that were true to

11:09:24 22 determine whether or not you were talking to

11:09:25 23 the perpetrator of the crime?

11:09:30 24 A Again, if it were facts that would lead to a

11:09:36 25 person being suspected of the crime, I wouldn't

11:09:42 1 give them those facts until that person gave  
11:09:46 2 them to me.

11:09:48 3 Q Before you interviewed Mr. Richard Gwin in the  
11:10:17 4 Payne homicide, you had reviewed all the  
11:10:22 5 investigatory reports, right?

11:10:24 6 A Yes.

11:10:25 7 Q And the medical examiner's reports, right?

11:10:32 8 A Anything that was in that file.

11:10:32 9 Q Would the crime scene photographs have also  
11:10:35 10 been in that file, in the M file?

11:10:36 11 A Yes.

11:10:36 12 Q So you also reviewed all the crime scene  
11:10:38 13 photographs of the Payne homicide  
11:10:40 14 investigation, right?

11:10:41 15 A Yes.

11:10:41 16 Q And that was something -- you would have seen  
11:10:43 17 those photographs prior to your interactions  
11:10:46 18 with Mr. Gwin in October 1995, right?

11:10:48 19 A Yes.

11:10:48 20 Q Okay. And so prior to your efforts to locate  
11:10:57 21 and identify Cortez, you knew who the victim  
11:11:03 22 was, Jessica Payne, right?

11:11:05 23 A Yes.

11:11:05 24 Q You knew the date her body was found?

11:11:07 25 A Yes.

11:11:07 1 Q You knew the location that she was found,  
11:11:10 2 behind the house?

11:11:12 3 A Yes.

11:11:13 4 Q You knew that she was found underneath a stack  
11:11:16 5 of mattresses?

11:11:17 6 A Yes.

11:11:18 7 Q You knew that she was found with her shirt up,  
11:11:22 8 right?

11:11:23 9 A Yes.

11:11:23 10 Q You knew that she was wearing a green bra and  
11:11:25 11 it was torn?

11:11:26 12 A That I don't recall.

11:11:27 13 Q Okay. But you would have known that based on  
11:11:30 14 your review of the photographs and the records,  
11:11:33 15 right?

11:11:33 16 A Yes.

11:11:33 17 Q And you knew that she was found with her pants  
11:11:36 18 pulled down, right?

11:11:37 19 A Yes.

11:11:37 20 Q You knew that she was identified as having some  
11:11:42 21 tattoos on her body, right?

11:11:45 22 A I would have known then. I don't recall that  
11:11:47 23 now.

11:11:47 24 Q Sure. You knew all of the evidence of injury  
11:11:55 25 to her body that the medical examiner had

11:11:58 1 identified, right?

11:11:59 2 A Yes.

11:12:00 3 Q Okay. And so you knew that she had -- her neck

11:12:07 4 had been cut, right?

11:12:09 5 A Yes.

11:12:09 6 Q You knew there was some bruising on her hands,

11:12:12 7 right?

11:12:15 8 A If it was in the reports, then I would have

11:12:18 9 known about it.

11:12:18 10 Q Okay. You knew there was some bruising on her

11:12:21 11 legs, both the anterior and the post

11:12:24 12 internal -- inside of her leg and outside of

11:12:25 13 her leg, right?

11:12:26 14 A I don't recall now, but if it was in the

11:12:33 15 reports, then I'm sure I reviewed it.

11:12:36 16 Q Okay. And you had knowledge in terms of what

11:12:46 17 was reported about Ms. Payne's whereabouts

11:12:49 18 until she was found; you had knowledge about

11:12:52 19 where she had been staying and some of the

11:12:54 20 people she had been with as well, right?

11:12:56 21 A Yes.

11:12:56 22 Q Okay. Okay. You said earlier that you had a

11:13:24 23 limited but independent recollection of your

11:13:27 24 interactions with Mr. Chaunte Ott, right?

11:13:30 25 A Yes.

11:13:31 1 Q Can you please describe for me your independent  
11:13:34 2 recollections of your interactions with Chaunte  
11:13:37 3 Ott during the Payne homicide investigation?  
11:13:39 4 A We met with him in an interview room.  
11:13:44 5 Q At the CIB?  
11:13:45 6 A In the CIB. And I remember him being very  
11:13:53 7 smug, and he denied any knowledge or  
11:13:58 8 involvement.  
11:14:00 9 Q Can you describe for me what Mr. -- you recall  
11:14:11 10 Mr. Ott saying or doing that made you interpret  
11:14:18 11 him as being very smug?  
11:14:19 12 A He was chuckling and laughing.  
11:14:21 13 Q Anything else?  
11:14:26 14 A No.  
11:14:31 15 Q Do you have an independent recollection of how  
11:14:33 16 long you spoke to Mr. Ott?  
11:14:34 17 A No.  
11:14:37 18 Q Do you have an independent memory of the  
11:14:40 19 charging conference for Mr. Ott and Mr. Hadaway  
11:14:44 20 that was conducted at the district attorney's  
11:14:46 21 office with Mark Williams?  
11:14:48 22 A Somewhat.  
11:14:49 23 Q What's your independent recollection of the  
11:14:51 24 charging conference with Mark Williams for  
11:14:55 25 Mr. Hadaway and Mr. Ott?

11:14:56 1 A I know that Mr. Hadaway was brought in to talk  
11:15:03 2 to Mr. Williams and that he was provided  
11:15:06 3 counsel for the interview and that Hadaway  
11:15:16 4 confirmed that what he told us was the truth,  
11:15:21 5 and he went to relay that statement back to  
11:15:26 6 Mr. Williams.

11:15:27 7 Q Do you have an independent recollection of you  
11:15:33 8 and -- you taking Mr. Hadaway to be polygraphed  
11:15:38 9 after the charging conference?

11:15:41 10 A I know that he was polygraphed. I don't know  
11:15:44 11 if I took him there. I don't recall that.

11:15:47 12 Q Okay. Okay. Do you remember Mr. Gwin being  
11:15:54 13 part of this charging conference?

11:15:58 14 A I don't know at what point Mr. Gwin was brought  
11:16:04 15 in to talk to Mr. Williams.

11:16:06 16 Q Okay. Have you told me everything that  
11:16:15 17 consists of your independent recollection of  
11:16:17 18 your interactions with Mr. Ott?

11:16:18 19 A Yes.

11:16:19 20 Q Okay. Now, you also said you had an  
11:16:23 21 independent recollection that had been recently  
11:16:27 22 refreshed by your review of the statements  
11:16:29 23 Mr. Hadaway gave to you and James DeValkenaere,  
11:16:31 24 as well as other detectives: Eric Moore,  
11:16:36 25 Detective Dubis, and Detective Percy Moore,

11:16:39 1 right?

11:16:39 2 A Yes.

11:16:39 3 Q Okay. Do you have an independent recollection

11:16:49 4 that before you spoke to Mr. Hadaway that you

11:16:53 5 reviewed the reports or the handwritten

11:16:56 6 statements that Detective Eric Moore, Detective

11:17:01 7 Percy Moore or Dubis had prepared?

11:17:05 8 A I don't recall looking at their statements.

11:17:08 9 Q Is it fair to say that you would have known --

11:17:15 10 you would have read those statements or talked

11:17:16 11 to those detectives to find out what

11:17:20 12 Mr. Hadaway said to them before you spoke to

11:17:22 13 Mr. Hadaway?

11:17:23 14 A Yes.

11:17:23 15 Q And why would you do that, or why did you do

11:17:25 16 that?

11:17:26 17 A So I know what he had told the previous

11:17:30 18 detectives regarding his knowledge or

11:17:33 19 involvement in the investigation.

11:17:36 20 Q Do you remember that after you and James

11:17:41 21 DeValkenaere talked to Richard Gwin that you

11:17:45 22 briefed the next shift and told them to go find

11:17:48 23 Mr. Hadaway and bring him in?

11:17:49 24 A I don't recall that.

11:17:56 25 Q Okay. I'm going to mark your deposition, your

11:18:13 1 first deposition in the Ott case as Exhibit 1  
11:18:16 2 and see if it refreshes your recollection,  
11:18:18 3 okay?

11:18:18 4 (Discussion off the record.)

11:18:36 5 (Exhibit No. 1 was marked.)

11:18:53 6 MS. DONNELL: Do you want to take a  
11:18:55 7 short break, or are you just e-mailing it now?

11:18:59 8 MS. WILLIAMS: I'm just looking for  
11:19:02 9 it. It'll just take me a second.

11:19:05 10 MS. GEHLING: You can start. It's  
11:19:06 11 fine. You don't have to wait for me.

11:19:08 12 MS. DONNELL: Okay.

11:19:09 13 BY MS. DONNELL:

11:19:09 14 Q Mr. Buschmann, I'm going to hand you what I've  
11:19:12 15 designated as Exhibit 1 to your deposition, and  
11:19:15 16 Exhibit 1 is the deposition that was taken of  
11:19:17 17 you in the Ott versus City of Chicago matter on  
11:19:21 18 June 30th, 2010, okay?

11:19:24 19 A Okay.

11:19:24 20 Q And I'm going to call your attention to Page 91  
11:19:32 21 of your deposition, and this has four pages, so  
11:19:38 22 it's going to be on Page 93.

11:19:44 23 A Page 93?

11:19:46 24 Q 93 of the document, but it's going to be  
11:19:48 25 Page 91 of the deposition. It's kind of

11:19:51 1 strange. I'm not sure why. Oh, here. It's  
11:19:55 2 about midway through.

11:20:13 3 Okay. So, Mr. Buschmann, I'm just  
11:20:15 4 going to have you review your testimony on  
11:20:17 5 Page 91 starting at Line 3 going down to Line,  
11:20:26 6 let's see, 21, and you can just let me know  
11:20:34 7 when you've had a chance to review that  
11:20:36 8 testimony.

11:20:50 9 A Okay.

11:20:50 10 Q Does that refresh your recollection that after  
11:20:53 11 you and James DeValkenaere drove Mr. Gwin home  
11:20:57 12 that you briefed the next shift of detectives  
11:20:59 13 to try and locate Mr. Hadaway?

11:21:03 14 A Maybe I'm in the wrong part here.

11:21:06 15 Q Okay.

11:21:08 16 A You said Page --

11:21:09 17 Q Page 91, lines --

11:21:15 18 A Oh.

11:21:15 19 Q Sorry.

11:21:15 20 A I'm on 81.

11:21:15 21 Q Oh, 81?

11:21:16 22 A I'm sorry.

11:21:17 23 Q No problem. That's not a problem. Thanks for  
11:21:21 24 letting me know. If you want to just review  
11:21:23 25 your testimony on Page 91 of the deposition

11:21:26 1 starting at Line 3 --

11:21:29 2 A Okay.

11:21:30 3 Q -- to, like, Line 23. 21, sorry. 3 to 21.

11:21:35 4 A Okay.

11:21:35 5 Q Okay. Did you have a chance to review your

11:21:38 6 testimony back in 2010?

11:21:39 7 A Yes.

11:21:39 8 Q Does that refresh your recollection that it was

11:21:42 9 you and your partner, DeValkenaere, James

11:21:46 10 DeValkenaere, had briefed the next shift of

11:21:48 11 detectives after you drove Mr. Gwin home?

11:21:51 12 A Yes.

11:21:52 13 Q Okay. Do you, as you sit here -- and I can --

11:21:55 14 you can set that down. We'll just leave it

11:21:56 15 here if we need it. Do you remember anything

11:21:58 16 about that briefing?

11:22:03 17 A No.

11:22:03 18 Q Okay. Generally speaking, can you describe

11:22:07 19 what those briefing -- were there -- sorry,

11:22:10 20 strike that.

11:22:10 21 Were there briefings at the beginning

11:22:14 22 and end of each shift in the detective -- in

11:22:19 23 the homicide unit?

11:22:19 24 A Yes.

11:22:19 25 Q Okay. And what did those briefings consist of?

11:22:22 1 A Any follow-up that had been conducted by the  
11:22:25 2 previous shift would be conveyed to the next  
11:22:29 3 shift that's going to still be working on the  
11:22:31 4 case, and any new information that was obtained  
11:22:35 5 by the previous shift would be passed on to the  
11:22:38 6 shift that was going to be working on the case.

11:22:40 7 Q So was it common practice that when you were  
11:22:43 8 coming on shift you would start your shift by  
11:22:46 9 hearing the briefing from the shift going off?

11:22:48 10 A Yes.

11:22:48 11 Q And then it was also common practice that  
11:22:51 12 unless you were actively investigating a crime,  
11:22:54 13 you'd come back to CIB and participate in the  
11:22:57 14 briefing at the end of the shift?

11:22:59 15 A Yes.

11:22:59 16 Q And was the purpose or one of the main reasons  
11:23:02 17 of that is to have continuity in investigations  
11:23:05 18 and to pass on new information?

11:23:06 19 A Yes.

11:23:06 20 Q And that was because while reports might be  
11:23:09 21 getting dictated -- they weren't quite in the  
11:23:11 22 file -- you could share information in real  
11:23:13 23 time about what had happened through the course  
11:23:15 24 of the shift?

11:23:16 25 A Correct.

11:23:16 1 Q Okay. Okay. I was asking you some questions  
11:23:38 2 about the training you received or didn't  
11:23:43 3 receive about interrogations of suspects. Did  
11:23:47 4 you have a -- a general approach to how you  
11:23:49 5 conducted interrogations when you were working  
11:23:51 6 homicide as a Milwaukee police detective?

11:23:54 7 A Yes.

11:23:55 8 Q Can you describe your approach to  
11:23:57 9 interrogations of suspects?

11:23:59 10 A Every person is different, but I had a -- a set  
11:24:06 11 practice that I tried to follow where I would  
11:24:12 12 first advise the person of their Miranda  
11:24:17 13 warnings, then I would get background  
11:24:20 14 information, and then I would start talking to  
11:24:24 15 them about whatever incident it was that I was  
11:24:27 16 investigating. I would write the statement out  
11:24:34 17 in the presence of that person. I would read  
11:24:38 18 it out loud to them. I would make note of any  
11:24:45 19 cross-outs or deletions or additions I had on  
11:24:49 20 the statement, and I would have them place  
11:24:51 21 their initials where that correction was made,  
11:24:54 22 and I would also place my initials there.

11:24:58 23 At the end of the statement, I would  
11:25:01 24 have them write that they had either read or  
11:25:04 25 had read to them the statement and that it was

11:25:07 1 true and had them sign it. Then after the  
11:25:11 2 statement was done, then I asked them if there  
11:25:13 3 would be anything they would want to write in  
11:25:16 4 their own handwriting and in their own words at  
11:25:19 5 the end of the statement.

11:25:20 6 Q Why would you do that last part, ask them to --  
11:25:24 7 if they wanted to write anything out in their  
11:25:26 8 own words?

11:25:27 9 A It personalizes the -- the statement and if  
11:25:32 10 they -- many times they show remorse, and they  
11:25:38 11 want to put in words that they are apologizing  
11:25:41 12 or why they did something and they want to  
11:25:45 13 apologize to families and of the such.

11:25:49 14 Q Was the approach to interrogations that you've  
11:25:58 15 just described for us that you used, was that  
11:26:00 16 in any way informed by your training at the  
11:26:06 17 detective academy?

11:26:09 18 A No.

11:26:09 19 Q Okay. Were you given any training as a  
11:26:23 20 detective or a police officer on how to handle  
11:26:28 21 an individual with -- individuals with limited  
11:26:31 22 cognitive functioning?

11:26:33 23 A No.

11:26:33 24 Q How about how to -- and is that true with  
11:26:38 25 interrogations, you didn't get any special

11:26:40 1 training on how to conduct interrogations of  
11:26:42 2 someone with limitations in their cognitive  
11:26:45 3 functioning?

11:26:45 4 A No.

11:26:47 5 Q Okay. How about as a detective or police  
11:26:54 6 officer? Did the Milwaukee Police Department  
11:26:57 7 provide to you any training on -- on custodial  
11:27:04 8 interrogations of individuals who had medical  
11:27:09 9 needs?

11:27:10 10 A Not that I recall.

11:27:11 11 Q So no training with respect how to handle  
11:27:15 12 diabetics or anybody like that?

11:27:17 13 A Not that I recall.

11:27:17 14 Q Okay. You were not provided any training as a  
11:27:57 15 polygraph examiner on how to read polygraph  
11:28:01 16 charts, correct?

11:28:01 17 A No.

11:28:01 18 Q I mean, it's true you don't have any training  
11:28:03 19 with respect to polygraphs, right?

11:28:07 20 A Correct.

11:28:07 21 Q Okay. Sorry. I had that double negative in  
11:28:10 22 there.

11:28:17 23 Okay. Do you know the person by the  
11:28:56 24 name Walter Ellis?

11:29:00 25 A Yes, I've heard his name.

11:29:02 1 Q Okay. And who do you know Walter Ellis to be?

11:29:06 2 A He was referred to as the "North Side

11:29:13 3 Strangler."

11:29:14 4 Q And did you have any -- well, as you sit here

11:29:24 5 today, did you ever have any interactions with

11:29:27 6 Mr. Ellis when you were a Milwaukee police

11:29:30 7 officer or detective that you're aware of?

11:29:31 8 A None.

11:29:32 9 Q How about with his -- any of his family

11:29:39 10 members? Do you, as you sit here today,

11:29:41 11 remember any interactions with Martha Ellis?

11:29:44 12 A No.

11:29:44 13 Q Mattie Ellis?

11:29:46 14 A No.

11:29:46 15 Q All right. I'm going to mark this as Exhibit

11:30:13 16 2.

11:30:14 17 (Exhibit No. 2 was marked.)

11:30:31 18 BY MS. DONNELL:

11:30:31 19 Q Okay. Detective Buschmann, I'm handing you

11:30:35 20 what I've designated as Exhibit 2 to your

11:30:38 21 deposition. Do you recognize Exhibit 2 as a

11:30:44 22 Milwaukee Police Department Supplementary

11:30:49 23 Report, a two-page report? It has the Bates

11:30:52 24 stamp MPD SJH284 and 285. Do you recognize the

11:30:59 25 form that this exhibit is prepared on?

11:31:03 1 A Yes.

11:31:03 2 Q Okay. And I'll represent to you that this is

11:31:11 3 from the M file for the Payne homicide, okay?

11:31:14 4 A Okay.

11:31:15 5 Q And do you see here -- I'm going to call your

11:31:20 6 attention to the bottom of Page 1 of Exhibit 2

11:31:23 7 where the officer reports "I then interviewed a

11:31:26 8 Martha S. Ellis, black female, 2/11/63, of 602

11:31:33 9 West Burleigh and she stated that possibly last

11:31:36 10 Saturday or Sunday she was standing on her

11:31:37 11 porch when she observed a white female walking

11:31:39 12 past her house and that she appeared to be 16

11:31:42 13 or 17 and she was carrying her shoes and her

11:31:45 14 purse in her hand and that as she walked past

11:31:48 15 her house, a car pulled over and she walked

11:31:52 16 towards the car and after a few seconds, the

11:31:55 17 car pulled away and she continued to walk on

11:31:57 18 Burleigh. Ellis was then also interviewed by

11:32:00 19 the detective bureau." Do you see that?

11:32:02 20 A Hm-hm, yes.

11:32:03 21 Q Okay. And so this report of an interview with

11:32:08 22 Ms. Martha Ellis was one of the reports you

11:32:12 23 would have reviewed in the -- your review of

11:32:16 24 the Payne homicide file prior to you working it

11:32:19 25 up as a cold case, correct?

11:32:21 1 A It would have been in the file, yes.

11:32:22 2 Q Okay. And you would have reviewed it?

11:32:25 3 A Yes.

11:32:25 4 Q Okay. Okay. As you sit here today, do you

11:33:13 5 have a memory of doing any work on the Payne

11:33:15 6 homicide yourself prior to being involved as a

11:33:17 7 cold case?

11:33:19 8 A No.

11:33:19 9 Q Okay. Let's mark this as Exhibit 3.

11:33:28 10 (Exhibit No. 3 was marked.)

11:33:40 11 BY MS. DONNELL:

11:33:40 12 Q Mr. Buschmann, I'm handing you what I've

11:33:42 13 designated as Exhibit 3 to your deposition.

11:33:45 14 Exhibit 3 has Bates stamp MPD SJH354 and 3- --

11:33:51 15 534 and 535. It also has the M file from

11:33:57 16 M3084, Section 4, Pages 258 and 259. Do you

11:34:05 17 recognize Exhibit 3 as your supplementary

11:34:09 18 report from your work on the Jessica Payne

11:34:11 19 homicide from back on October 9th, 1995?

11:34:14 20 A Yes.

11:34:14 21 Q Okay. And that's your signature on the back of

11:34:17 22 Page 2?

11:34:19 23 A Yes, it is.

11:34:20 24 Q Okay. And was this when you were working it as

11:34:22 25 a cold case, or was this working it before it

11:34:25 1 became a cold case?

11:34:27 2 A While I was on cold case.

11:34:34 3 Q This would have been on cold case?

11:34:36 4 A Yes.

11:34:36 5 Q How do you know that?

11:34:37 6 A Because that's the first time I was partners

11:34:40 7 with James DeValkenaere.

11:34:41 8 Q Is when you were assigned to the cold case

11:34:45 9 squad?

11:34:45 10 A Yes.

11:34:45 11 Q Okay. Okay. And Exhibit 3 is documenting an

11:34:58 12 interview you and James DeValkenaere conducted

11:35:02 13 with Cassandra McMurray who reportedly had

11:35:08 14 information about Rebecca Morrison about the

11:35:10 15 Payne homicide, right?

11:35:11 16 A Yes.

11:35:11 17 Q Okay. Do you know who Rebecca Morrison was?

11:35:17 18 A Yes.

11:35:17 19 Q Who was she?

11:35:18 20 A She was a friend of Jessica Payne.

11:35:21 21 Q And do you recall that she was with Jessica

11:35:27 22 staying at that home on the north side of

11:35:29 23 Milwaukee with Sandra Giles prior to Jessica's

11:35:32 24 murder?

11:35:33 25 A Yes.

11:35:33 1 Q Sandra Giles -- here, I can take that. Do you  
11:35:37 2 know Sandra Giles?

11:35:39 3 A I do not.

11:35:40 4 Q Okay. Okay. This will be Exhibit 4.  
11:36:57 5 (Exhibit No. 4 was marked.)

11:36:58 6 BY MS. DONNELL:

11:37:02 7 Q Okay. Mr. Buschmann, I'm handing you what I've  
11:37:05 8 designated as Exhibit 4. Exhibit 4 is Bates  
11:37:08 9 stamped HADAWAY38647 consecutive through 38656.  
11:37:17 10 It also has a prior exhibit designation to the  
11:37:20 11 deposition that I took of you back in the Ott  
11:37:22 12 case on April 12th, 2012, okay?

11:37:27 13 A Okay.

11:37:27 14 Q And we have referred to it as the "Moore  
11:37:33 15 report," but it's a memorandum by Detective  
11:37:37 16 Eric Moore dated Tuesday, January 9th, 1996,  
11:37:44 17 documenting -- identifying cases that -- for  
11:37:48 18 possible submission of evidence to the FBI lab  
11:37:51 19 for DNA analysis, right?

11:37:53 20 A Yes.

11:37:53 21 Q And I showed this document to you back in April  
11:37:57 22 of 2012. Do you remember that?

11:37:59 23 A No.

11:37:59 24 Q Okay. Well, I'd like to give you a chance to  
11:38:09 25 look over it, but maybe what we'll do is I'm

11:38:12 1 going to ask you some preliminary questions,  
11:38:14 2 and then I'll give you a chance to read it.  
11:38:16 3 It's not very long, but I'm going to ask you  
11:38:18 4 some questions first, and then maybe we can  
11:38:21 5 take a break and you can look at it, okay?  
11:38:21 6 A Okay.  
11:38:22 7 Q As you sit here today, before you have a chance  
11:38:24 8 to look at Exhibit 4 -- and, again, I am going  
11:38:27 9 to give you a chance to look at it, so I'm not  
11:38:29 10 trying to trick you at all -- but do you  
11:38:32 11 remember at that time that the cold case squad  
11:38:33 12 was created in the Milwaukee Police Department  
11:38:37 13 that there was an effort to identify unsolved  
11:38:43 14 homicides that may have been perpetrated by a  
11:38:46 15 common perpetrator?  
11:38:49 16 A Yes.  
11:38:49 17 Q Can you tell me what you recall just  
11:38:52 18 independent about that?  
11:38:56 19 A I think independently they were prostitutes,  
11:39:04 20 known prostitutes, that were found to be  
11:39:08 21 victims of homicides.  
11:39:10 22 Q Okay. And so there was -- was there a thought  
11:39:23 23 among homicide detectives that there might be a  
11:39:25 24 single perpetrator who was committing those  
11:39:28 25 crimes, those murders?

11:39:29 1 A They were trying to link them together.

11:39:33 2 Q And that was -- the thought was that there was

11:39:38 3 enough homicides that had sort of similar

11:39:41 4 features that it looked like it could have been

11:39:43 5 a single perpetrator?

11:39:45 6 A Yes.

11:39:45 7 Q Okay. Do you remember any briefings that

11:39:50 8 happened in the homicide unit that pertained to

11:39:53 9 that?

11:39:54 10 A I don't recall.

11:39:55 11 Q Okay. Do you remember any memos going out that

11:39:59 12 were identifying murders or homicide victims

11:40:01 13 that were possibly linked?

11:40:03 14 A Not that I recall.

11:40:04 15 Q Okay. Do you remember, as you sit here today,

11:40:42 16 any other features of the homicides other than

11:40:45 17 the victims were prostitutes?

11:40:56 18 A They were all black.

11:41:00 19 Q The victims were black?

11:41:01 20 A The victims were black, and I believe they were

11:41:08 21 strangled.

11:41:09 22 Q And were they -- all the victims you were

11:41:12 23 thinking of, were they women?

11:41:14 24 A Yes.

11:41:14 25 Q Okay. How about the locations where the bodies

11:41:17 1 were found? Do you remember, as you sit here  
11:41:19 2 today, anything that was common about that?  
11:41:21 3 A No.  
11:41:21 4 Q Okay. Sorry, just one second. Okay. Okay.  
11:43:01 5 Well, why don't you take a chance to look at  
11:43:06 6 Exhibit 4, and maybe we could take just a -- go  
11:43:09 7 off the record and take a short break?  
11:43:12 8 THE VIDEOGRAPHER: Going off the  
11:43:12 9 record at 11:43.  
11:43:16 10 (Brief recess taken.)  
11:52:47 11 THE VIDEOGRAPHER: We're back on the  
11:52:53 12 record at 11:52.  
11:52:54 13 BY MS. DONNELL:  
11:52:55 14 Q Okay. On the break, Mr. DeValkenaere -- I  
11:52:56 15 mean, Mr. -- sorry, Mr. Buschmann, on the  
11:52:59 16 break, were you able to review Exhibit 4 which  
11:53:01 17 is the Moore report?  
11:53:02 18 A Yes.  
11:53:02 19 Q Did reviewing the Moore report refresh your  
11:53:06 20 recollection in any way of some of the efforts  
11:53:09 21 Eric Moore was making as part of the cold case  
11:53:12 22 unit to identify cases for further  
11:53:14 23 investigation or DNA testing?  
11:53:16 24 A Yes.  
11:53:16 25 Q Okay. How did -- what did -- how did it

11:53:18 1 refresh your recollection?

11:53:22 2 A Just from reading it, that he resubmitted the

11:53:25 3 evidence to be retested at the crime lab, along

11:53:30 4 with possible suspects in the other cases or

11:53:36 5 people of interest. I -- I wasn't in the

11:53:41 6 homicide unit any longer when this report was

11:53:43 7 authored.

11:53:45 8 Q In January 1996?

11:53:47 9 A Yes.

11:53:48 10 Q How do you know that?

11:53:49 11 A I was only there for about a year, and I

11:53:55 12 went -- went to another unit after. I don't

11:53:59 13 believe I was there at this time.

11:54:01 14 Q So right after you were doing your

11:54:04 15 investigation of the Payne homicide you were

11:54:06 16 only in the cold case for a couple months or --

11:54:12 17 because, you know, the --

11:54:13 18 A I --

11:54:14 19 Q Sorry.

11:54:15 20 A I would have been there until the end of the --

11:54:18 21 the Ott trial. So, yeah, I would have been

11:54:21 22 there.

11:54:22 23 Q Because the Ott trial was in 1996?

11:54:25 24 A Yes.

11:54:25 25 Q Okay. So this Moore report would have been at

11:54:28 1 the same time that you and James DeValkenaere  
11:54:31 2 and Eric Moore were all part of the cold case  
11:54:34 3 squad?

11:54:35 4 A Yes.

11:54:35 5 Q Okay. So I'm just curious if refreshing -- if  
11:54:38 6 reviewing Eric Moore's report on the cases he  
11:54:41 7 was reviewing to identify for additional DNA  
11:54:45 8 testing refreshed your recollection of any  
11:54:48 9 conversations you guys had as the cold case  
11:54:51 10 squad about this review he was doing?

11:54:55 11 A Detective Moore was working by himself on  
11:55:01 12 these. He was assigned to reevaluate the  
11:55:04 13 evidence and to resubmit it for testing. He  
11:55:09 14 didn't work with us at all. This was his  
11:55:12 15 assignment.

11:55:12 16 Q So the cold case squad, those four of you, Eric  
11:55:19 17 Moore and -- I'm forgetting the other guy's  
11:55:24 18 name. He was one of your regular partners at  
11:55:27 19 one point, too.

11:55:27 20 A Gary Temp?

11:55:29 21 Q Gary Temp. Gary Temp was part of the cold case  
11:55:31 22 squad, too, when you were first there, right?

11:55:33 23 A I believe so, yes.

11:55:33 24 Q And so he was doing his own thing, or was he  
11:55:36 25 partnered with anybody?

11:55:37 1 A I can't answer -- I -- I know that Eric Moore  
11:55:40 2 had been assigned to this.

11:55:43 3 Q Meaning this project of identifying --

11:55:47 4 A This project, yes.

11:55:48 5 Q Meaning Exhibit 4, identifying cases for DNA  
11:55:51 6 testing?

11:55:52 7 A Correct.

11:55:52 8 Q Or identifying cold cases that would benefit  
11:55:54 9 from DNA testing?

11:55:56 10 A Yes.

11:55:56 11 Q And one of the cases that Eric Moore identified  
11:55:58 12 is Murder 3084 for Jessica Payne, right, if you  
11:56:08 13 look at Page 2 of the Eric Moore report?

11:56:14 14 A Yes.

11:56:14 15 Q So Eric Moore was identifying the Payne  
11:56:20 16 homicide as a case that could benefit from  
11:56:24 17 further DNA testing, right?

11:56:26 18 A Yes.

11:56:26 19 Q And this was just a few months after you had  
11:56:29 20 obtained statements from Mr. Gwin and  
11:56:31 21 Mr. Hadaway?

11:56:32 22 A Correct.

11:56:33 23 Q Okay. Did you have conversations with Eric  
11:56:36 24 Moore about identifying Jessica Payne's case  
11:56:40 25 for additional DNA testing since it was right

11:56:43 1 at the time when you and your partner were  
11:56:45 2 investigating it?

11:56:45 3 A Not that I recall.

11:56:47 4 Q Okay. Do you see on Page -- and nothing in  
11:56:51 5 Exhibit 4 refreshes your recollection about any  
11:56:53 6 of those conversations?

11:56:54 7 A No.

11:56:54 8 Q As you sit here today, can you think of a  
11:56:57 9 reason why Jessica Payne was on this list, you  
11:57:05 10 know, two months after you and your partner had  
11:57:08 11 obtained statements from Mr. Gwin and  
11:57:11 12 Mr. Hadaway?

11:57:11 13 MS. GEHLING: Objection; foundation.

11:57:15 14 You can answer if you know.

11:57:19 15 THE WITNESS: No.

11:57:19 16 BY MS. DONNELL:

11:57:19 17 Q Okay. On the third page of Eric Moore's  
11:57:24 18 report, there were 33 persons that were  
11:57:25 19 subsequently identified as possible suspects,  
11:57:28 20 right?

11:57:30 21 A Yes.

11:57:31 22 Q And some of those individuals are redacted out,  
11:57:41 23 correct?

11:57:42 24 A Yes.

11:57:43 25 Q And some of those individuals include

11:58:02 1 individuals that were suspects that are  
11:58:05 2 identified in the Payne homicide, correct, if  
11:58:08 3 you look at Page 4? So you'll see --  
11:58:18 4 A Yes.  
11:58:18 5 Q -- suspect -- Eric Moore had identified Suspect  
11:58:23 6 No. 27 as Terrance Wallace, right?  
11:58:25 7 A Correct.  
11:58:25 8 Q And that was from the -- a suspect from the  
11:58:27 9 Payne homicide?  
11:58:27 10 A Yes.  
11:58:28 11 Q He had identified Johnnie Lee Jones from the  
11:58:31 12 Payne homicide?  
11:58:32 13 A Yes.  
11:58:32 14 Q And he identified Walter J.D. Moffett from the  
11:58:37 15 Payne homicide, right?  
11:58:39 16 A Yes.  
11:58:39 17 Q Does that refresh your recollection in any way  
11:58:41 18 as to conversations you had with Eric Moore  
11:58:44 19 about further investigation of three suspects  
11:58:47 20 from the Payne homicide you were investigating?  
11:58:49 21 A No.  
11:58:49 22 Q Do you remember the suspect that Eric Moore  
11:59:07 23 identified as No. 14, Mr. Thomas Wynn, who had  
11:59:12 24 been identified as a suspect in the Preston,  
11:59:17 25 McCormick, Farrior, and Maniece cases?

11:59:18 1 A Yes.

11:59:18 2 Q He was a city forestry worker. Do you remember  
11:59:20 3 that guy?

11:59:22 4 A Yes, I do.

11:59:23 5 Q What do you remember about Mr. Wynn?

11:59:25 6 A That he was a city forestry worker.

11:59:28 7 Q Anything else?

11:59:29 8 A No.

11:59:29 9 Q Do you remember, back then, information about  
11:59:34 10 some of the victims were -- had been part of  
11:59:40 11 community drug rehab groups and had all been  
11:59:43 12 participants in that or some of them had been  
11:59:46 13 participants in community drug rehab groups, a  
11:59:49 14 friendship group, a friendship circle?

11:59:52 15 A I don't recall.

11:59:56 16 Q It's fair to say that even though you reviewed  
11:59:59 17 all of Exhibit 4 today, Eric Moore's report,  
12:00:03 18 and see that both Jessica Payne is identified  
12:00:07 19 here for DNA testing and three of the suspects  
12:00:13 20 from Jessica Payne's homicide are identified  
12:00:15 21 for further testing, that nothing in this has  
12:00:19 22 refreshed your recollection as to conversations  
12:00:20 23 you had with Eric Moore back in late '95, early  
12:00:25 24 '96 about the Payne homicide?

12:00:27 25 A Correct.

12:00:27 1 Q Okay. This memo was submitted to Victor Venus,  
12:00:43 2 the captain of the police, right?  
12:00:44 3 A Yes.  
12:00:44 4 MS. GEHLING: Objection; foundation.  
12:00:46 5 BY MS. DONNELL:  
12:00:46 6 Q Or it's identified to -- on Page 1, to Victor  
12:00:50 7 Venus, right?  
12:00:51 8 A To Victor Venus, yes.  
12:00:53 9 Q And was that the chief of the Milwaukee Police  
12:00:56 10 Department at that time?  
12:00:56 11 A No.  
12:00:56 12 Q He was a captain?  
12:00:58 13 A Yes.  
12:00:58 14 Q Was he captain of the CIB?  
12:01:01 15 A I don't recall.  
12:01:02 16 Q Okay. When you said Eric Moore had been  
12:01:05 17 assigned to this project of identifying cases  
12:01:07 18 for additional testing, who -- do you know who  
12:01:12 19 assigned him to that task?  
12:01:13 20 A No.  
12:01:13 21 Q Okay. Who did you report to when you were part  
12:01:20 22 of the cold case squad?  
12:01:23 23 A I don't recall.  
12:01:24 24 Q Okay. If you previously testified that you  
12:01:29 25 mostly interacted with Lieutenant Ardis, does

12:01:32 1 that refresh your recollection?

12:01:34 2 A I know he was a homicide lieutenant.

12:01:38 3 Q Okay. Do you ever see or talk to Eric Moore

12:02:30 4 since your retirement?

12:02:31 5 A No.

12:02:31 6 Q How about Percy Moore?

12:02:43 7 A No.

12:02:57 8 Q Okay. Do you remember Walter J.D. -- I mean, I

12:03:39 9 don't -- J.D. Moffett as an individual in the

12:03:43 10 Payne homicide?

12:03:47 11 A I recall the name.

12:03:50 12 Q Do you remember his interactions with Jessica

12:03:54 13 Payne prior to her murder?

12:03:55 14 A No.

12:03:56 15 Q Okay. Do you remember that Sandra Giles had

12:03:59 16 reported that he had had sex with her, that she

12:04:04 17 had sex with him?

12:04:04 18 A I don't recall that.

12:04:05 19 Q Okay. I'm going to show you what I've

12:04:08 20 designated as Exhibit 5 to your -- Exhibit 5 to

12:04:12 21 your deposition.

12:04:25 22 (Exhibit No. 5 was marked.)

12:04:25 23 BY MS. DONNELL:

12:04:25 24 Q Mr. Buschmann, I'm holding -- handing you what

12:04:27 25 I've designated as Exhibit 5 to your

12:04:31 1 deposition. It has Bates stamp MPD SJH497 and  
12:04:36 2 498. This is a supplementary report by  
12:04:40 3 reporting officer Detective Mark Levenhagen,  
12:04:46 4 and I'm -- and this is from the Jessica Payne  
12:04:53 5 M file, Section 4, Pages 220 and 221, okay?  
12:04:57 6 A Hm-hm, yes.  
12:04:58 7 Q Okay. And this is documenting his  
12:05:00 8 investigation from September 12, 1995, where he  
12:05:05 9 spoke to Sandra Giles at the -- the jail,  
12:05:09 10 right?  
12:05:12 11 A Yes.  
12:05:13 12 Q And this would have been one of the reports  
12:05:15 13 that was in the M file for the Payne homicide  
12:05:17 14 that you reviewed prior to getting involved as  
12:05:20 15 a cold case investigation, correct?  
12:05:22 16 A Yes.  
12:05:22 17 Q And if you see on the back, the last paragraph,  
12:05:29 18 Mark Levenhagen asked Sandra Giles if J.D.,  
12:05:33 19 meaning J.D. Moffett who was identified on  
12:05:35 20 the -- Walter J.D. Moffett who's identified on  
12:05:40 21 the front page, whether he had had sex with  
12:05:42 22 Rebecca to which she said that J.D. had had sex  
12:05:46 23 with both Rebecca Morrison and Jessica Payne,  
12:05:48 24 and then he inquired how Giles knew that, and  
12:05:50 25 she explained that J.D. had been in the back

12:05:53 1 room with Jessica for several hours when  
12:05:57 2 Rebecca was gone and that she stated at one  
12:05:58 3 point Jessica came out dressed in blue jeans  
12:05:59 4 and a T-shirt and J.D. said to get Jessica a  
12:06:02 5 towel. "She stated that while Jessica was  
12:06:05 6 getting a towel in the bathroom, he told Giles  
12:06:07 7 how -- how good Jessica's stuff was, and I  
12:06:09 8 asked Giles what J.D. meant by this, at which  
12:06:13 9 Giles stated she believed J.D. had sex with  
12:06:15 10 Jessica because that's what he meant by 'her  
12:06:17 11 good stuff,'" right?  
12:06:18 12 A That's what it says.  
12:06:19 13 Q Okay. And this would have been one of those  
12:06:23 14 reports you read, right?  
12:06:24 15 A Yes.  
12:06:24 16 Q Okay. And J.D. -- J.D. Moffett is one of those  
12:06:27 17 individuals identified for further  
12:06:28 18 investigation as a suspect in Eric Moore's  
12:06:33 19 report, right?  
12:06:33 20 A Yes.  
12:06:34 21 Q And there was evidence that Jessica Payne was  
12:06:36 22 having sex in the house where she was staying  
12:06:39 23 with Sandra Giles, right?  
12:06:42 24 A Based on this, yes.  
12:06:49 25 Q Okay. Do you remember there being evidence

12:06:52 1 that Becky Morrison had been prostituting  
12:06:54 2 herself during that same time frame?  
12:06:56 3 A I don't recall.  
12:06:56 4 Q Okay. But if there was that evidence in the  
12:07:01 5 supplementary report, you would have been aware  
12:07:04 6 of it back when you were investigating in 1995,  
12:07:06 7 right?  
12:07:07 8 A Yes.  
12:07:07 9 Q Okay. But you do recall independently there  
12:07:17 10 was evidence of drug use in the home where  
12:07:20 11 Becky Morrison and Jessica Payne were staying  
12:07:22 12 before her murder, right?  
12:07:25 13 A Yes.  
12:07:26 14 Q Okay. Okay. I'm going to mark this as  
12:08:10 15 Exhibit 6.  
12:08:11 16 (Exhibit No. 6 was marked.)  
12:08:12 17 BY MS. DONNELL:  
12:08:12 18 Q Mr. Buschmann, I'm handing you what I've  
12:08:15 19 designated as Exhibit 6 to your deposition. Do  
12:08:18 20 you recognize Exhibit 6 as a supplementary  
12:08:21 21 report prepared by your partner, James  
12:08:25 22 DeValkenaere, in the Payne homicide  
12:08:26 23 investigation?  
12:08:26 24 A Yes.  
12:08:27 25 Q Okay. And you didn't see this supplementary

12:08:31 1 report to prepare for your deposition; is that  
12:08:33 2 right?  
12:08:33 3 A That's correct.  
12:08:33 4 Q Okay. This documents that on Friday, October  
12:08:43 5 20th you and James DeValkenaere were assigned  
12:08:52 6 to assist in the investigation of the  
12:08:55 7 above-captioned incident. Do you see that?  
12:08:56 8 A Yes.  
12:08:56 9 Q But you had already -- were you assigned to  
12:09:00 10 assist with it, or this is what you were  
12:09:02 11 working as a cold case at this point?  
12:09:04 12 A I don't recall.  
12:09:05 13 Q Okay. But this indicates that you were going  
12:09:07 14 to find a suspect named Cortez who was  
12:09:11 15 described as a 17-year-old black male, right?  
12:09:14 16 A Yes.  
12:09:14 17 Q And you recall that being one of the first  
12:09:16 18 things that you and James DeValkenaere were  
12:09:19 19 doing as part of the cold case investigation  
12:09:22 20 was to figure out who this Cortez was, right?  
12:09:25 21 A Yes.  
12:09:25 22 Q Okay. So that refreshes your recollection that  
12:09:27 23 this was part of your cold case investigation,  
12:09:29 24 right?  
12:09:29 25 A Yes.

12:09:29 1 Q And, in fact, you didn't get partnered with  
12:09:32 2 James DeValkenaere until you were part of the  
12:09:34 3 cold case squad, right?  
12:09:36 4 A Yes.  
12:09:37 5 Q And what I showed you in Exhibit 3 -- or  
12:09:43 6 Exhibit 3 was a report that you authored from  
12:09:48 7 October 9th which predated this and you said  
12:09:52 8 that was when you were working it up as a cold  
12:09:55 9 case, right?  
12:09:56 10 A Yes.  
12:10:06 11 Q And this was about 11 days later, right?  
12:10:15 12 A I guess what -- yes.  
12:10:23 13 Q So in Exhibit 3, it documented your  
12:10:29 14 investigation with James DeValkenaere on  
12:10:31 15 October 9th when you went to talk to Cassandra  
12:10:36 16 McMurray who had information about Rebecca  
12:10:39 17 Morrison, Jessica Payne's friend, right?  
12:10:41 18 A Yes.  
12:10:41 19 Q And then your Exhibit 6 has -- documents your  
12:10:45 20 investigation with James DeValkenaere to try  
12:10:48 21 and figure out who Cortez is, right?  
12:10:51 22 A Correct.  
12:10:51 23 Q Okay. Does that refresh your recollection in  
12:10:53 24 any way that the first thing you were doing in  
12:10:55 25 the cold case was to find out information about

12:10:57 1                   Becky Morrison?

12:11:01 2                   A    In chronological order, yes.

12:11:03 3                   Q    Okay. Okay. So back to Exhibit 6, this would

12:11:08 4                   have been when you were working it up with Jim

12:11:11 5                   DeValkenaere as a cold case, right?

12:11:13 6                   A    Yes.

12:11:13 7                   Q    And you were trying to find out who this

12:11:16 8                   17-year-old Cortez is, and so you wanted to

12:11:19 9                   talk to family members who were residing at

12:11:22 10                  1611 North 19th Street, right?

12:11:24 11                  A    Yes.

12:11:26 12                  Q    And at that residence you talked to Teresa

12:11:29 13                  Gwin; is that right?

12:11:30 14                  A    Yes.

12:11:31 15                  Q    And she stated that Cortez Brown is her

12:11:33 16                  brother, Richard Gwin?

12:11:37 17                  A    Yes.

12:11:38 18                  Q    Okay. Then you go on to -- this report

12:11:49 19                  indicates that three days later on October 23rd

12:11:52 20                  you and Jim DeValkenaere went to go find

12:11:57 21                  Richard Gwin's mother, Melva Gwin, right?

12:12:01 22                  A    Yes.

12:12:01 23                  Q    And you guys told Mrs. Gwin, his mom, that you

12:12:08 24                  needed to speak to her son about a serious

12:12:10 25                  situation, but you didn't advise her on the

12:12:14 1 specifics, right?

12:12:15 2 A Right.

12:12:24 3 Q And then at the bottom, the second-to-last

12:12:28 4 paragraph, it says "At approximately 1:30 p.m.

12:12:31 5 on 10/24/95, Melva Gwin appeared at the

12:12:35 6 Criminal Investigation Bureau along with her

12:12:37 7 son, Richard C. Gwin. Subsequently Richard

12:12:41 8 Gwin was interviewed in an interview room at

12:12:44 9 the Criminal Investigation Bureau"?

12:12:47 10 A Yes.

12:12:47 11 Q Does that refresh your recollection that

12:12:49 12 Mr. Gwin was brought in by his mom?

12:12:51 13 A Yes.

12:12:51 14 Q Okay. And so does this refresh your

12:12:58 15 recollection that the first time you and Jim

12:13:00 16 DeValkenaere talked to Mr. Gwin was on the

12:13:03 17 afternoon of October 24th?

12:13:05 18 A Yes.

12:13:05 19 Q Okay. And then if you look, in that interview

12:13:15 20 with Mr. Gwin, he denied any knowledge of the

12:13:18 21 incident which had occurred at North 7th Street

12:13:21 22 and West Burleigh and he denied having ever

12:13:24 23 made statements to anyone regarding any girl

12:13:26 24 being held for sale or anyone having killed a

12:13:29 25 girl and stating that she deserved it, right?

12:13:31 1 He denied any knowledge or involvement,  
12:13:35 2 correct?  
12:13:35 3 A Yes.  
12:13:35 4 Q Okay. Do you see on this -- the last page of  
12:13:55 5 Exhibit 6 that -- that you went -- it says --  
12:14:04 6 the report says "When questioned further, Gwin  
12:14:06 7 went on to describe how the girl who was found  
12:14:09 8 behind the house on North 7th Street and West  
12:14:11 9 Burleigh Street had died as a result of having  
12:14:15 10 her throat slashed. Gwin was confronted with  
12:14:16 11 the fact that he was showing personal knowledge  
12:14:17 12 of this offense and he was unable to give any  
12:14:19 13 explanation as to how he would have received  
12:14:21 14 this knowledge," right?  
12:14:22 15 A Yes.  
12:14:22 16 Q Was the fact that her throat was slashed, was  
12:14:30 17 that publicly known?  
12:14:32 18 A No, not to my knowledge.  
12:14:34 19 Q You know that there were public citizens who  
12:14:37 20 had found the body and reported it, right?  
12:14:41 21 A Yes.  
12:14:42 22 Q And so her -- the observation of her neck being  
12:14:49 23 slashed had been observed by members of the  
12:14:51 24 public, right?  
12:14:52 25 A I don't -- I don't recall.

12:14:53 1 Q Well, you have no knowledge that that wasn't  
12:14:58 2 known by individuals who had found the body,  
12:15:01 3 right?

12:15:01 4 MS. GEHLING: Objection; foundation.

12:15:03 5 You can answer.

12:15:04 6 THE WITNESS: I don't recall.

12:15:05 7 BY MS. DONNELL:

12:15:05 8 Q Had you done -- it states that "He initially  
12:15:08 9 stated he had seen news accounts relative to  
12:15:12 10 the death, but then he was told that this had  
12:15:14 11 not been public knowledge." Do you see that?

12:15:16 12 A Yes.

12:15:16 13 Q How did you and James DeValkenaere know that  
12:15:20 14 the fact that Jessica Payne's throat had been  
12:15:23 15 slashed was not public?

12:15:26 16 A The manner of death had not been released to  
12:15:29 17 the public by our department.

12:15:31 18 Q Other than that, the fact that the manner of  
12:15:35 19 death had not been released by the department,  
12:15:38 20 did you have any awareness of what was known in  
12:15:41 21 the neighborhood at the time?

12:15:41 22 A No.

12:15:41 23 Q Okay. So it's entirely possible that the fact  
12:15:46 24 that the white girl had been found with her  
12:15:48 25 neck slashed was known in the neighborhood

12:15:50 1 based on what people had observed, right?

12:15:53 2 MS. GEHLING: Objection; foundation.

12:15:55 3 THE WITNESS: I don't know.

12:15:56 4 BY MS. DONNELL:

12:15:56 5 Q Okay. You have no way of knowing that it

12:15:58 6 wasn't known in the neighborhood even if the

12:16:00 7 department hadn't released that information,

12:16:02 8 correct?

12:16:03 9 A I -- I don't know.

12:16:06 10 Q But this report goes on -- I was going to ask

12:16:22 11 you more questions about the report.

12:16:22 12 A Okay.

12:16:24 13 Q The report goes on to say "Due to the

12:16:25 14 information that had been received prior to

12:16:27 15 Richard Gwin appearing at the Criminal

12:16:29 16 Investigation Bureau and the fact that he was

12:16:32 17 displaying some knowledge of this incident" --

12:16:36 18 meaning that he knew her throat had been

12:16:38 19 slashed, right?

12:16:39 20 A Yes.

12:16:40 21 Q -- "he was taken into custody at 4:50 p.m. on

12:16:45 22 10/24/95," right?

12:16:47 23 A Yes.

12:16:47 24 Q And so you and your partner arrested Mr. Gwin

12:16:52 25 for the Payne homicide based on this, right?

12:16:55 1 A Yes.

12:16:56 2 Q Okay. Then the report goes on to say

12:17:01 3 "Subsequent to being taken into custody, Gwin

12:17:04 4 would give additional statements. These

12:17:06 5 statements are detailed in separate

12:17:08 6 supplementary reports," right?

12:17:09 7 A Yes.

12:17:09 8 Q And then this report is dated 10/27/95, right?

12:17:13 9 A Yes.

12:17:13 10 Q A week after the actual -- or, sorry, strike

12:17:17 11 that.

12:17:18 12 Three days after the actual interview

12:17:19 13 with Mr. Gwin on October 24th, right?

12:17:22 14 A Yes.

12:17:22 15 Q Okay. Does having reviewed Exhibit 6 refresh

12:17:29 16 your recollection in any way of your

12:17:32 17 interrogation of Mr. Richard Gwin?

12:17:43 18 A Minimal.

12:17:44 19 Q Okay. Does it refresh your recollection that

12:18:26 20 you and your partner decided to take him into

12:18:29 21 custody for the Payne homicide?

12:18:31 22 A Yes.

12:18:32 23 Q Okay. Okay. Do you remember taking Mr. Gwin

12:18:51 24 to be polygraphed?

12:18:54 25 A No.

12:18:54 1 Q Okay. I'm going to mark this as Exhibit 7.

12:19:48 2 (Exhibit No. 7 was marked.)

12:19:48 3 BY MS. DONNELL:

12:19:49 4 Q Okay. I'm handing you what I've designated as

12:19:52 5 Exhibit 7 to your deposition. Exhibit 7 has

12:19:54 6 Bates stamp MPD SJH552, 553. It comes from the

12:19:59 7 M homicide file 3084, Section 4, Pages 276 and

12:20:03 8 277. Do you recognize this as the

12:20:06 9 supplementary report prepared by your partner,

12:20:10 10 James DeValkenaere, picking up on Tuesday,

12:20:14 11 October 24th at 4:50 p.m. for the custodial

12:20:20 12 interrogation of Mr. Gwin right after you guys

12:20:22 13 decided to arrest him?

12:20:24 14 A Yes.

12:20:24 15 Q Okay. And you have not had a chance to review

12:20:30 16 this in preparing for your deposition; is that

12:20:33 17 right?

12:20:33 18 A No.

12:20:33 19 Q Okay. All right. So Exhibit 7 indicates that

12:20:51 20 you and your partner provided Mr. Gwin his

12:20:56 21 Miranda rights; is that right?

12:20:58 22 A Yes.

12:20:58 23 Q And he gives some background information that

12:21:01 24 he was born in Memphis but moved to Milwaukee a

12:21:05 25 year and a half ago and he lives with his mom

12:21:07 1 on 20th and Locust?

12:21:09 2 A Yes.

12:21:09 3 Q Okay. He said he's currently in the 11th grade

12:21:14 4 at the North Division High School, right?

12:21:15 5 A Yes.

12:21:15 6 Q And here he gives his date of birth as

12:21:19 7 12/22/77, right?

12:21:20 8 A Yes.

12:21:21 9 Q And so when you were interviewing Mr. Gwin, he

12:21:26 10 was 17 years old, just shy of his 18th

12:21:30 11 birthday; is that right?

12:21:31 12 A Yes.

12:21:31 13 Q Okay. He again denied having any involvement

12:21:38 14 in Jessica Payne's homicide, right?

12:21:41 15 A Yes.

12:21:43 16 Q And he again denied that he had any -- ever

12:21:47 17 said that he had a girl for sale or that he'd

12:21:49 18 killed a girl and she deserved it, right?

12:21:51 19 A Correct.

12:21:52 20 Q And then he goes on to say that he thought the

12:21:58 21 police wanted to talk to him about the death of

12:22:00 22 a white girl on 7th and Burleigh because

12:22:02 23 someone told him about it, and he said he'd

12:22:05 24 heard about it from a guy named Sammy Joe who's

12:22:08 25 a black male who lives next door to his sister,

12:22:12 1                   Teresa, on 19th and Galena, right?

12:22:17 2     A   Yes.

12:22:17 3     Q   Okay. Before I ask you more questions about

12:22:23 4                   Exhibit 7, do you remember anything of the

12:22:27 5                   questioning back and forth that you and your

12:22:29 6                   partner had with Mr. Gwin prior to your

12:22:32 7                   decision to arrest him, so, you know, when you

12:22:34 8                   were first talking to him on the afternoon of

12:22:38 9                   the 24th before 4:50 when you guys decided to

12:22:45 10                  arrest him?

12:22:45 11     A   No.

12:22:46 12     Q   Do you remember whether it was an accusatorial

12:22:51 13                  questioning or if it was just open-ended

12:22:53 14                  questioning? Do you remember anything about

12:22:54 15                  the nature of the questioning you and your

12:22:56 16                  partner were engaged in?

12:22:58 17     A   No.

12:22:58 18     Q   Do you remember, prior to his mom bringing him

12:23:12 19                  in, that you and your partner thought Richard

12:23:15 20                  Gwin was a suspect and possibly had involvement

12:23:19 21                  in Payne's homicide based on the statements he

12:23:23 22                  had allegedly made?

12:23:28 23     A   Statements he made to whom?

12:23:32 24     Q   Well, the statements that you were inquiring of

12:23:38 25                  him about, that he had said he had a white girl

12:23:40 1 for sale and that -- and that he'd killed a  
12:23:46 2 girl and she deserved it?

12:23:47 3 A He was a person of interest.

12:23:49 4 Q What's a person of interest?

12:23:50 5 A Someone that displayed possible knowledge.

12:23:57 6 Q So in your interactions with him before you  
12:24:03 7 arrested him -- well, in your first interaction  
12:24:08 8 with him, it doesn't indicate that he was given  
12:24:11 9 his Miranda rights, does it?

12:24:13 10 A He was not in custody.

12:24:14 11 Q Okay. So at that time he wasn't being  
12:24:17 12 interrogated as a suspect; is that right?

12:24:19 13 A Correct.

12:24:19 14 Q Why not?

12:24:23 15 A We didn't have probable cause to arrest him.

12:24:27 16 Q So from 11:00 a.m. -- sorry, from -- so from  
12:24:34 17 1:30 p.m. on October 24th to 4:50 p.m., he was  
12:24:40 18 not being interrogated as a suspect in the  
12:24:43 19 Payne homicide?

12:24:44 20 A No.

12:24:45 21 Q And then at 4:50 p.m., you decided to arrest  
12:24:49 22 him and that's when he got his Miranda rights?

12:24:52 23 A Yes.

12:24:52 24 Q Was his mom present for that first interview  
12:24:56 25 from 1:30 p.m. to 4:50 p.m.?

12:25:00 1 MS. GEHLING: Objection; relevance.

12:25:02 2 THE WITNESS: No.

12:25:02 3 BY MS. DONNELL:

12:25:02 4 Q Was there any requirement for individuals under

12:25:04 5 18 to have a present -- a parent or legal

12:25:07 6 guardian with them during a murder

12:25:09 7 interrogation?

12:25:09 8 A No.

12:25:10 9 Q Why not?

12:25:12 10 MS. GEHLING: Objection; foundation;

12:25:13 11 also relevance.

12:25:18 12 THE WITNESS: I don't know.

12:25:19 13 BY MS. DONNELL:

12:25:19 14 Q Okay. Okay. Once he was arrested and you

12:25:27 15 started a custodial interrogation of him, did

12:25:32 16 it turn to be accusatorial in nature at that

12:25:40 17 point?

12:25:40 18 A I don't recall.

12:25:41 19 Q You don't recall one way or the other?

12:25:44 20 A I don't have independent recollection of how

12:25:48 21 the interview went.

12:25:50 22 Q So as you sit here today, you have no memory of

12:25:53 23 how the interrogation went -- the custodial

12:25:56 24 interrogation went with Mr. Gwin, right?

12:25:58 25 A That's correct.

12:25:59 1 Q Okay. On your -- in your custodial  
12:26:25 2 interrogation of Mr. Gwin, he states that --  
12:26:35 3 that he reported that when he was at his  
12:26:38 4 sister's house a couple months ago late at  
12:26:40 5 night, he happened to look over to Sammy Joe's  
12:26:43 6 house and he saw Sammy Joe on the porch with  
12:26:45 7 two white girls, right?  
12:26:47 8 A Yes.  
12:26:47 9 Q And then your partner's -- your report -- James  
12:26:52 10 DeValkenaere's report says "Subject identifies  
12:26:54 11 one of the girls as Jessica Payne after being  
12:26:59 12 shown her photo," right?  
12:27:00 13 A Yes.  
12:27:00 14 Q What photo did you and your partner show  
12:27:03 15 Richard Gwin in this interrogation on October  
12:27:07 16 24th?  
12:27:07 17 A I don't recall.  
12:27:08 18 Q Would it have been the crime scene photograph?  
12:27:13 19 A No.  
12:27:13 20 Q It would have been a photograph of her alive?  
12:27:15 21 A Yes.  
12:27:19 22 Q Okay. Okay. And then according to this  
12:27:28 23 report, Mr. Gwin had let you know that Sammy  
12:27:32 24 Joe had stated a month later that the girl he  
12:27:34 25 was kicking it with had been found at 7th and

12:27:38 1 Burleigh and that -- behind an abandoned house  
12:27:42 2 with her neck cut, right?  
12:27:43 3 A Yes.  
12:27:43 4 Q And then it indicates that Mr. Gwin had an  
12:27:49 5 opportunity to review the handwritten  
12:27:50 6 statement, right?  
12:27:51 7 A Yes.  
12:27:53 8 Q And that this interview concluded at 7:45 p.m.?  
12:28:00 9 A Correct.  
12:28:01 10 Q Okay. So you and your partner were  
12:28:03 11 interrogating -- well, you and your partner  
12:28:05 12 were interviewing Mr. Gwin from 1:30 to 4:50  
12:28:13 13 p.m. first, right?  
12:28:14 14 A Yes.  
12:28:14 15 Q And then at 4:50 you guys arrested him and  
12:28:18 16 continued to interrogate him in a custodial  
12:28:21 17 interrogation until 7:45 p.m., right?  
12:28:24 18 A Yes.  
12:28:24 19 Q And then he was taken over to the jail?  
12:28:27 20 A I believe so.  
12:28:28 21 Q Okay. Now, nothing in the reports you've read  
12:28:35 22 so far, Exhibits 6 and 7, gives an inculpatory  
12:28:42 23 statement or a statement inculpating  
12:28:45 24 Mr. Hadaway or Mr. Ott in the murder of Jessica  
12:28:48 25 Payne, correct?

12:28:49 1 A Right.

12:28:49 2 Q Okay. So at this point on the 24th, Mr. Gwin

12:28:54 3 still hasn't given you a statement that he had

12:28:56 4 actual knowledge or participation in Jessica

12:28:59 5 Payne's murder, right?

12:29:00 6 A Correct.

12:29:00 7 Q You're not -- you have no information saying

12:29:02 8 that Mr. Hadaway had knowledge or participation

12:29:05 9 in Jessica Payne's murder, right?

12:29:08 10 A Correct.

12:29:08 11 Q And Mr. Ott isn't even mentioned?

12:29:18 12 A Correct.

12:29:18 13 Q Okay.

12:29:20 14 MS. DONNELL: I think I said that we

12:29:22 15 would get a break at 12:30, so let's take a

12:29:25 16 lunch break.

12:29:26 17 THE VIDEOGRAPHER: Going off the

12:29:27 18 record at 12:29.

12:29:30 19 (Recess taken.)

01:19:11 20 THE VIDEOGRAPHER: We're back on the

01:19:14 21 record at 1:19.

01:19:18 22 BY MS. DONNELL:

01:19:19 23 Q Okay. Where we left off, I was asking you

01:19:25 24 questions about your -- in your time with

01:19:29 25 Mr. Richard Gwin. Do you remember that?

01:19:31 1 A Yes.

01:19:31 2 Q Okay. I think I asked you earlier before we  
01:19:34 3 took a break whether you have any independent  
01:19:36 4 recollection of taking Mr. Gwin to be  
01:19:39 5 polygraphed on October 25th, 1995, and I  
01:19:44 6 believe you said no; is that right?

01:19:46 7 A Correct.

01:19:47 8 Q Okay. I'm going to show you what I'm  
01:19:51 9 designating as Exhibit 8 to your deposition and  
01:20:06 10 see if it refreshes your recollection.  
01:20:06 11 (Exhibit No. 8 was marked.)

01:20:06 12 BY MS. DONNELL:

01:20:08 13 Q Mr. Buschmann, I'm handing you what I've  
01:20:08 14 designated as Exhibit 8 to your deposition.  
01:20:11 15 Exhibit 8 has Bates stamps MPD SJH1347 and -48.  
01:20:15 16 It's from the Payne homicide file, M3084. This  
01:20:20 17 is from Section 15, Pages 93 and 94. You can  
01:20:24 18 get a chance to look at that and I'll see if it  
01:20:27 19 refreshes your recollection, okay?

01:20:54 20 A Okay.

01:20:54 21 Q Does reviewing -- do you recognize Exhibit 8 as  
01:20:58 22 a Milwaukee Police Department Criminal  
01:21:01 23 Investigation Bureau report of a polygraph  
01:21:04 24 examination?

01:21:04 25 A Yes.

01:21:05 1 Q Okay. And this report was documenting the  
01:21:09 2 polygraph examination of Richard Gwin on  
01:21:12 3 October 25th, 1995, at 10:02 a.m. until 11:41  
01:21:20 4 a.m.; is that right?  
01:21:21 5 A Yes.  
01:21:21 6 Q And you are the submitting investigator, right?  
01:21:24 7 A That's what it says.  
01:21:25 8 Q Okay. And this would have been after we looked  
01:21:32 9 at Exhibit 7, your custodial interrogation of  
01:21:35 10 Mr. Gwin on the 24th, right?  
01:21:38 11 A Correct.  
01:21:38 12 Q It's the next morning, right?  
01:21:39 13 A Yes.  
01:21:39 14 Q Okay. And the polygraph examiner is Richard --  
01:21:45 15 I'm sorry, Robert Simons, right?  
01:21:47 16 A Yes.  
01:21:48 17 Q Okay. And you -- you know Robert Simons?  
01:21:50 18 A I do.  
01:21:51 19 Q Had you worked with him before your work with  
01:21:57 20 him in the polygraphs he did in the Payne  
01:22:00 21 homicide investigation?  
01:22:01 22 A We were in the same unit.  
01:22:04 23 Q Okay. Where was the polygraph examination room  
01:22:09 24 with respect to where the homicide unit was?  
01:22:11 25 A It's on the same floor as the CIB, fourth

01:22:16 1 floor, and it was off in a corner in a back  
01:22:23 2 office.

01:22:23 3 Q Do you remember how many polygraph examiners  
01:22:27 4 there were in '95 other than Robert Simons?

01:22:31 5 A I believe there was one other one, Peter  
01:22:35 6 Gauthier.

01:22:36 7 Q Okay. And if you wanted to polygraph someone,  
01:22:43 8 did you have to set up an appointment, or could  
01:22:44 9 you just bring someone over during business  
01:22:47 10 hours, or how did it work?

01:22:48 11 A You'd have to set up an appointment to make  
01:22:51 12 sure they were available.

01:22:52 13 Q Did they work more than one shift?

01:22:56 14 A No.

01:22:56 15 Q Did the polygraph examiners just work day shift  
01:23:01 16 in the mid '90s?

01:23:02 17 A Yes.

01:23:04 18 Q And that was 8:00 a.m. to 4:00 p.m.?

01:23:06 19 A Yes.

01:23:06 20 Q So if you wanted to polygraph someone, it had  
01:23:10 21 to be during those hours?

01:23:11 22 A Unless they made arrangements to be available.

01:23:13 23 Q Does anything you've reviewed so far refresh  
01:23:16 24 your recollection as to when you had requested  
01:23:20 25 Mr. Gwin to be polygraphed?

01:23:30 1 A I don't recall requesting Mr. Gwin to be  
01:23:34 2 polygraphed.

01:23:35 3 Q Okay. Fair to say nothing you've seen so far  
01:23:39 4 refreshes your recollection on that score?

01:23:40 5 A No.

01:23:40 6 Q But you don't have reason to dispute that you  
01:23:43 7 had submitted to have Gwin polygraphed and he  
01:23:47 8 was polygraphed on October 25th?

01:23:48 9 A Correct.

01:23:49 10 Q Okay. And he was -- according to Robert  
01:23:54 11 Simons' report, Gwin was being polygraphed for  
01:23:58 12 the purpose of determining the truthfulness of  
01:24:00 13 his denials that he had knowledge or  
01:24:02 14 involvement in the homicide of Jessica Payne,  
01:24:05 15 right?

01:24:06 16 A Yes.

01:24:06 17 Q And according to this report, he was asked four  
01:24:13 18 relevant questions in the course of the  
01:24:16 19 polygraph examination, right?

01:24:20 20 A Yes.

01:24:20 21 Q "Do you know for sure who murdered Jessica,"  
01:24:24 22 right?

01:24:24 23 A Yes.

01:24:24 24 Q "Did you murder Jessica," right?

01:24:26 25 A Yes.

01:24:27 1 Q "Were you present when Jessica was murdered?"

01:24:30 2 A Right.

01:24:30 3 Q And "Right now, can you give me the name of the

01:24:33 4 person who murdered Jessica," right?

01:24:35 5 A Correct.

01:24:35 6 Q And Mr. Gwin is reported to have answered no to

01:24:39 7 each of those four relevant questions, right?

01:24:42 8 A Correct.

01:24:42 9 Q Do you -- when an individual is being taken to

01:24:48 10 be polygraphed, would you -- and you were

01:24:50 11 requesting it, would you first meet with

01:24:52 12 Mr. Simons or Gauthier and give them

01:24:56 13 information about the case and the suspect

01:24:58 14 before they administered the polygraph?

01:25:01 15 A Yes.

01:25:01 16 Q And that was, like -- was that considered,

01:25:04 17 like, a pre-polygraph interview?

01:25:06 18 A Giving background on what they were going to be

01:25:09 19 talking to the person about.

01:25:10 20 Q Because they may not necessarily -- meaning the

01:25:15 21 polygraph examiner, may not have any knowledge

01:25:17 22 of what that homicide was, the details about

01:25:20 23 it, right?

01:25:20 24 A Correct.

01:25:21 25 Q So it's fair to say sometime before Mr. Gwin

01:25:24 1 was administered a polygraph examination by  
01:25:30 2 Examiner Simons, you would have talked to  
01:25:32 3 Simons about the Payne homicide?  
01:25:35 4 A Possibly me or DeValkenaere. I'm not sure who.  
01:25:41 5 Q Or both of you?  
01:25:42 6 A Or both.  
01:25:42 7 Q Yep. And you would not have the individual  
01:25:45 8 present for that meeting, meaning Richard Gwin  
01:25:48 9 would not be present for it?  
01:25:50 10 A No.  
01:25:50 11 Q Do you know whether -- do you have any  
01:25:51 12 knowledge about reports that were prepared by  
01:25:55 13 the polygraph examiner for that pre-polygraph  
01:25:58 14 interview, the interview they had with  
01:26:01 15 detectives to get information about the case  
01:26:04 16 and about the individual they would be  
01:26:06 17 examining?  
01:26:06 18 A No.  
01:26:06 19 Q Okay. According to this Simons report, that  
01:26:18 20 "Upon conducting the examination and making  
01:26:20 21 careful evaluation of the polygraph charts,  
01:26:23 22 it's the opinion of this polygraphist that  
01:26:26 23 Richard Gwin is not being completely truthful  
01:26:29 24 in his denials," right?  
01:26:30 25 A Right.

01:26:30 1 Q And he goes on to indicate that he "reacted  
01:26:33 2 strongly to Questions 3 and 4 as listed below  
01:26:35 3 and may have some knowledge of who may have  
01:26:39 4 committed the offense or who may have been at  
01:26:41 5 the scene." Do you see that?  
01:26:42 6 A Yes.  
01:26:42 7 Q The opinion is being classified as "restricted  
01:26:47 8 lying due to the subject's young age and him  
01:26:54 9 having trouble with certain control questions  
01:26:57 10 used in the polygraph technique." Do you see  
01:26:58 11 that?  
01:26:58 12 A Yes.  
01:26:59 13 Q Do you, as you sit here today, know what the  
01:27:03 14 classification "restricted lying" means as a  
01:27:05 15 classification of a polygraph examination?  
01:27:07 16 A I have no idea.  
01:27:08 17 Q Okay. According to the report, one of the  
01:27:11 18 reasons for that was Mr. Gwin's young age  
01:27:13 19 because he was 17 at the time, right?  
01:27:15 20 A He was, yes.  
01:27:16 21 Q Did you -- is there any -- strike that.  
01:27:19 22 Did you have to get a parent or legal  
01:27:23 23 guardian's approval to polygraph a minor?  
01:27:26 24 MS. GEHLING: Objection; relevance.  
01:27:29 25 THE WITNESS: I don't recall.

01:27:30 1 BY MS. DONNELL:

01:27:32 2 Q There's nothing in this report that indicates  
01:27:34 3 that consent was given by Mr. Gwin's mom,  
01:27:40 4 correct?

01:27:41 5 MS. GEHLING: Objection; relevance  
01:27:43 6 and foundation.

01:27:44 7 MS. DONNELL: You can answer.

01:27:45 8 THE WITNESS: Correct.

01:27:45 9 BY MS. DONNELL:

01:27:45 10 Q Okay. And you don't have any memory of doing  
01:27:48 11 that, right?

01:27:49 12 A No.

01:27:50 13 Q Okay. I'm going to hand you what I've  
01:28:07 14 designated as Exhibit 9.

01:28:24 15 (Exhibit No. 9 was marked.)

01:28:24 16 BY MS. DONNELL:

01:28:25 17 Q Okay. Mr. Buschmann, I've handed you what I've  
01:28:28 18 designated as Exhibit 9 to your deposition.

01:28:30 19 This is Bates stamped MPD SJH716 consecutive to  
01:28:38 20 718, and it's a copy of the handwritten  
01:28:41 21 statement prepared by your partner as well as  
01:28:46 22 the Miranda rights.

01:28:49 23 A Hm-hm.

01:28:49 24 Q Is that right?

01:28:50 25 A Yes.

01:28:50 1 Q You didn't look at this document -- and this  
01:28:53 2 one's dated, I'm sorry, October 24th, 1995, at  
01:28:58 3 4:50 p.m., right?  
01:29:00 4 A Yes.  
01:29:00 5 Q You didn't look at this to prepare for your  
01:29:03 6 deposition; is that right?  
01:29:03 7 A That's correct.  
01:29:04 8 Q Do you recognize your signature on the second  
01:29:08 9 page of Exhibit 9?  
01:29:11 10 A Yes.  
01:29:11 11 Q And you also recognize your signature on the  
01:29:14 12 third page of Exhibit 9 for the Miranda  
01:29:18 13 warnings?  
01:29:19 14 A Yes.  
01:29:19 15 Q Okay. And it indicates that this interview  
01:29:23 16 started at 4:54 p.m. and ended at 7:45 p.m.; is  
01:29:28 17 that right?  
01:29:28 18 A Yes.  
01:29:28 19 Q And do you recognize this handwriting as your  
01:29:31 20 partner, Jim DeValkenaere's?  
01:29:34 21 A Yes.  
01:29:34 22 Q And this statement is the statement that  
01:29:49 23 corresponds to the supplementary report that  
01:29:52 24 your partner prepared of the custodial  
01:29:57 25 interrogation, Exhibit 7, right?

01:29:59 1 A Correct.

01:29:59 2 Q This will be 10 and 11.

01:30:34 3 (Exhibit Nos. 10 and 11 were marked.)

01:30:36 4 BY MS. DONNELL:

01:30:37 5 Q Okay. I'm going to hand you first what is

01:30:37 6 Exhibits 10 and 11. Exhibit 10 is Bates

01:30:38 7 stamped MPD SJH720 consecutive through 722. Do

01:30:44 8 you recognize this as the handwritten statement

01:30:46 9 that James DeValkenaere prepared for your

01:30:49 10 interrogation of Richard Gwin on the following

01:30:52 11 day, October 25th, 1995, beginning at 5:15

01:30:57 12 p.m.?

01:30:57 13 A Yes.

01:30:57 14 Q And this statement is reported to have

01:31:03 15 concluded at 6:45 p.m., right?

01:31:07 16 A Yes.

01:31:07 17 Q Okay. And so this would have been sometime

01:31:11 18 after the polygraph examination. There was

01:31:14 19 another time that you and your partner spoke to

01:31:17 20 Mr. Gwin, right?

01:31:18 21 A Yes.

01:31:18 22 Q And this statement comes after Mr. Gwin had

01:31:27 23 denied any knowledge or involvement in the

01:31:29 24 Payne homicide to you and your partner on

01:31:31 25 October 24th, right?

01:31:33 1 A Correct.

01:31:33 2 Q First as a witness, right?

01:31:37 3 A Yes.

01:31:37 4 Q Then in a custodial interrogation, right?

01:31:40 5 A Yes.

01:31:40 6 Q And then again on the morning of the 25th after

01:31:44 7 the -- or during the polygraph examination?

01:31:47 8 A Yes.

01:31:47 9 Q Okay. Do you know whether you spoke -- how

01:31:52 10 long you spoke to Mr. Gwin after the polygraph

01:31:57 11 examination?

01:31:58 12 A No.

01:31:58 13 Q Was it typical if the polygraph examination

01:32:03 14 resulted in a -- a finding of possible lying

01:32:07 15 being detected that you would then conduct a

01:32:11 16 post-polygraph interrogation of the individual?

01:32:14 17 A Yes.

01:32:14 18 Q So is it fair to say that you would have likely

01:32:19 19 again interrogated Mr. Gwin after you got the

01:32:23 20 results of his polygraph examination?

01:32:27 21 A Yes.

01:32:27 22 Q Was it typical that you'd wait, like, for six

01:32:31 23 hours to do that?

01:32:34 24 A It doesn't -- there's no time limit on when we

01:32:38 25 would have got to it.

01:32:39 1 Q Was it typical to interrogate someone right  
01:32:42 2 after they learned that the examiner found  
01:32:44 3 deception indicated?

01:32:52 4 A I -- I don't know. In this case, I don't know.

01:32:53 5 Q Sure. Putting this case aside since you don't  
01:32:56 6 remember this case, but was it typical -- like,  
01:32:59 7 you would go and set up a polygraph  
01:33:01 8 examination, give Simons or the other examiner  
01:33:04 9 information about the case and the individual,  
01:33:04 10 he would take them alone to be polygraphed,  
01:33:07 11 read the charts, come back with the results,  
01:33:09 12 and then depending on the results of the  
01:33:11 13 examination, there'd be a post-polygraph  
01:33:14 14 interrogation, right?

01:33:15 15 A There was times when the polygraphist would  
01:33:21 16 interview the person after the exam themselves.

01:33:26 17 Q Okay.

01:33:26 18 A Right after? There's no written rule when the  
01:33:29 19 person's going to be talked to after a  
01:33:31 20 polygraph is administered.

01:33:32 21 Q Is it possible that you talked to Richard Gwin  
01:33:35 22 right after the polygraph examination?

01:33:37 23 A I don't recall.

01:33:37 24 Q Okay. Were you as a detective able to observe  
01:33:43 25 the individual being polygraphed?

01:33:45 1 A No .

01:33:46 2 Q Like, there wasn't, like, a two-way glass or --

01:33:52 3 A No .

01:33:52 4 Q Okay. So the examiner would take the person

01:33:55 5 alone. Would you guys wait in the polygraph

01:33:58 6 office or go to the CIB?

01:34:00 7 A No, we wouldn't -- once he's with the

01:34:04 8 polygraphist, we'd go about our own business.

01:34:07 9 Q Would the polygraph examiner call you when they

01:34:10 10 had the results?

01:34:11 11 A Yes .

01:34:12 12 Q Okay. Do -- do you have a recollection of how

01:34:18 13 long a typical examination took?

01:34:21 14 A No .

01:34:21 15 Q Okay. Thanks. All right. So the statement

01:34:25 16 here, do you recognize your signature on Page 3

01:34:30 17 of Exhibit 10, the 10/25/95 statement by

01:34:36 18 Mr. Gwin?

01:34:36 19 A Yes .

01:34:36 20 Q Okay. Now, this statement -- strike that.

01:34:53 21 Do you see at the top of the

01:35:02 22 handwritten statement where it says -- after

01:35:06 23 giving the time and date and location of the

01:35:11 24 interview, it says "This interview was

01:35:13 25 conducted after Gwin's release from custody."

01:35:20 1 Do you see that?

01:35:21 2 A Yes.

01:35:21 3 Q And then it says "He was -- he was re-advised  
01:35:27 4 of his rights where he states he understands";  
01:35:31 5 is that right?

01:35:31 6 A Yes.

01:35:32 7 Q Can you explain to me what that -- what that  
01:35:36 8 means, that he was released from custody but  
01:35:39 9 then he was re-advised of his rights?

01:35:41 10 MS. GEHLING: Objection; foundation.

01:35:46 11 THE WITNESS: He was released from  
01:35:47 12 custody. There wasn't enough probable cause to  
01:35:50 13 hold him at the time. And when he was  
01:35:55 14 re-talked to, he was re-advised of his rights  
01:36:02 15 in case he was going to provide any  
01:36:07 16 incriminating information.

01:36:11 17 BY MS. DONNELL:

01:36:12 18 Q Do you -- well, you said Mr. Gwin was released  
01:36:15 19 because there wasn't probable cause to hold  
01:36:17 20 him; is that right?

01:36:18 21 A Yes.

01:36:18 22 Q Why was there not probable cause to hold him?

01:36:20 23 A We didn't have enough probable cause to hold  
01:36:23 24 him and get him charged.

01:36:25 25 Q Is this the interview, the October 25th early

01:36:48 1 evening interview of Mr. Gwin, that you have an  
01:36:50 2 independent recollection of?

01:36:53 3 A I haven't read the statement.

01:36:57 4 Q I've also designated in front of you Exhibit 11  
01:37:01 5 which is the supplementary report for the  
01:37:05 6 re-interview of Mr. Gwin from 10/25/1995 as  
01:37:09 7 well. Do you see that?

01:37:11 8 A Yes.

01:37:11 9 Q And you recognize that as your partner's  
01:37:13 10 supplementary report --

01:37:15 11 A Yes.

01:37:15 12 Q -- documenting your and his interview of  
01:37:19 13 Mr. Gwin after he was released, his  
01:37:21 14 administrative release from custody?

01:37:23 15 A Yes.

01:37:23 16 Q Okay.

01:37:30 17 A Yes, this is what I would say I -- this is what  
01:37:33 18 I recall.

01:37:34 19 Q Okay. Can you tell me everything you recall  
01:37:36 20 about this re-interview of Mr. Cortez [sic]?

01:37:42 21 A We already talked about that.

01:37:43 22 Q Well, did you release him from custody and tell  
01:37:47 23 him he was free to go home?

01:37:49 24 A We told him he was released from custody and  
01:37:54 25 that we wanted to talk to him before he went

01:37:57 1 home.

01:37:58 2 Q And you guys were his way home, right?

01:38:03 3 MS. GEHLING: Objection; relevance.

01:38:05 4 BY MS. DONNELL:

01:38:05 5 Q Well, you guys eventually drove Mr. Gwin home,

01:38:08 6 right?

01:38:08 7 A I don't recall.

01:38:08 8 Q Do you remember seeing that in the -- your

01:38:11 9 testimony in Ott?

01:38:13 10 A I never read the Ott deposition.

01:38:16 11 Q On Page 91, when I referred you to your

01:38:20 12 testimony earlier today. If you look at Page

01:38:32 13 91 -- oh, I'm sorry, it's not there. Hold on

01:39:02 14 just a second. My apologies.

01:39:02 15 MS. GEHLING: 90. It's the page

01:39:02 16 right before.

01:39:14 17 MS. DONNELL: Sorry. Thank you.

01:39:14 18 BY MS. DONNELL:

01:39:15 19 Q If you look at Page 90 --

01:39:15 20 MS. GEHLING: Yeah.

01:39:17 21 BY MS. DONNELL:

01:39:17 22 Q -- does that refresh your recollection that you

01:39:19 23 and your partner drove Mr. Gwin home?

01:39:29 24 A Yes.

01:39:30 25 Q Okay. So you did drive Mr. Gwin home on the

01:39:34 1 25th, right?

01:39:35 2 A Yes.

01:39:35 3 Q All right. So before Mr. Gwin gave the

01:39:42 4 statement on the 25th, you had indicated to him

01:39:45 5 that he was free to go home?

01:39:47 6 A Yes.

01:39:48 7 Q And he chose not to go home?

01:39:53 8 A He chose to talk with us.

01:39:55 9 Q Did he indicate why he chose to talk to you?

01:39:59 10 A No.

01:39:59 11 Q Was that unusual that an individual who had

01:40:04 12 just been held in custody and interrogated

01:40:07 13 for -- and polygraphed for knowledge and

01:40:09 14 involvement in a murder was then released from

01:40:12 15 custody and chose to stay and talk?

01:40:15 16 A No.

01:40:15 17 Q That happened before other than this occasion?

01:40:18 18 A I don't recall if it's ever happened before.

01:40:21 19 It's not unusual.

01:40:21 20 Q But you can't think of another instance today,

01:40:24 21 can you?

01:40:25 22 A Not today, no.

01:40:26 23 Q Okay. Did Mr. Gwin indicate to you why he was

01:40:42 24 choosing to talk to you and your partner after

01:40:47 25 he was released from custody?

01:40:52 1 A I don't know.

01:40:53 2 Q Did -- is it fair to assume that after Mr. Gwin

01:41:02 3 was found to have had failed or possible

01:41:06 4 deception on his polygraph that there would

01:41:08 5 have been a post-polygraph interrogation of

01:41:11 6 Mr. Gwin?

01:41:14 7 A This is -- are you saying this is the

01:41:18 8 post-polygraph?

01:41:19 9 Q I'm not saying that. I'm saying it's just fair

01:41:24 10 to assume there would have been at one point a

01:41:25 11 post-polygraph interrogation where deception is

01:41:28 12 indicated?

01:41:29 13 A Yes.

01:41:29 14 Q That would have been an investigative step that

01:41:32 15 would have been conducted in a homicide

01:41:34 16 investigation where there's somebody who's

01:41:36 17 taken to be polygraphed for knowledge or

01:41:37 18 participation in a murder and deception is

01:41:39 19 indicated. That wouldn't just be left gone,

01:41:44 20 left alone; there would be an interrogation by

01:41:46 21 somebody, right?

01:41:48 22 A Yes.

01:41:48 23 Q So either you or your partner would have done

01:41:52 24 it or you would expect the examiner to do it?

01:41:55 25 A Yes.

01:41:56 1 Q Okay. And that post-polygraph examination of  
01:42:00 2 Mr. Gwin should be documented by somebody,  
01:42:03 3 whoever did it, right?  
01:42:04 4 A Correct.  
01:42:05 5 Q Okay. Did you make Mr. Gwin any promises that  
01:42:20 6 if he implicated Mr. Hadaway in the Payne  
01:42:28 7 homicide that he would receive?  
01:42:31 8 A No.  
01:42:31 9 Q Did you -- did your partner in your presence  
01:42:35 10 make any promises to Mr. Gwin that if he  
01:42:38 11 cooperated and implicated Mr. Hadaway in the  
01:42:41 12 Payne homicide that he might receive?  
01:42:44 13 A No.  
01:42:44 14 Q Did you make any threats to Mr. Gwin that he  
01:42:48 15 could be charged with the Payne homicide if he  
01:42:52 16 did not implicate Mr. Hadaway in the Payne  
01:42:56 17 homicide?  
01:42:57 18 A No.  
01:42:57 19 Q Did you hear your partner, Jim DeValkenaere,  
01:42:59 20 make any threats to Mr. Richard Gwin that if he  
01:43:04 21 did not implicate Chaunte Ott in the Payne  
01:43:07 22 homicide that he could be charged with it?  
01:43:09 23 A No.  
01:43:10 24 Q And even when Mr. Gwin was under arrest -- or  
01:43:27 25 was under arrest and in custody for possibly

01:43:30 1 committing the Payne homicide, you did not --  
01:43:36 2 did you -- well, strike that.

01:43:37 3 Did you at any point during your  
01:43:39 4 custodial interrogation of Mr. Gwin threaten  
01:43:42 5 that he could be charged with a crime?

01:43:46 6 A No.

01:43:47 7 Q Did you provide Mr. Gwin any non-public facts  
01:43:58 8 about the Payne homicide in your questioning of  
01:44:00 9 him?

01:44:00 10 A No.

01:44:00 11 Q Did your partner provide any non-public facts  
01:44:03 12 to Mr. Gwin in his questioning of Mr. Gwin?

01:44:05 13 A No.

01:44:05 14 Q Okay. In this -- in the supplementary report  
01:44:32 15 or in the statement, whichever is -- which  
01:44:35 16 would you like to refer to?

01:44:36 17 A This one.

01:44:38 18 Q Exhibit 11?

01:44:39 19 A Yes.

01:44:39 20 Q Okay. So looking at Exhibit 11, on Page 2 it's  
01:44:42 21 documented that Mr. Gwin stated that he was in  
01:44:49 22 the car with Sammy, meaning Sam Hadaway, in the  
01:44:53 23 front passenger seat, the girl in the back  
01:44:55 24 middle seat, and Chaunte was in the back right  
01:44:58 25 seat; is that right?

01:44:59 1 A Yes.

01:44:59 2 Q And that Gwin stated he drove to 7th Street,

01:45:03 3 North 7th Street, and West Burleigh Street

01:45:07 4 without stopping?

01:45:07 5 A Yes.

01:45:07 6 Q And then he indicates he stopped on North 7th

01:45:11 7 Street, and after stopping, all of them smoked

01:45:17 8 some bud that he had, right?

01:45:21 9 A Yes.

01:45:21 10 Q And "bud" was referring to marijuana?

01:45:25 11 A Yes.

01:45:25 12 Q And that after that they were in the car

01:45:28 13 listening to music and that Sammy then said he

01:45:33 14 thought the girl had some money and that's why

01:45:36 15 they were talking -- taking her to the spot,

01:45:38 16 right?

01:45:39 17 A Yes.

01:45:41 18 Q And then he stated Sammy said that they should

01:45:44 19 go to the -- into the spot -- well, strike

01:45:46 20 that.

01:45:47 21 Gwin said that Sammy told them they

01:45:50 22 would be back in a minute, and then he waited

01:45:52 23 in the car, right?

01:45:53 24 A Yes.

01:45:53 25 Q And then the report goes on to say that Sammy

01:46:18 1 said about 15 -- that Gwin said about 15  
01:46:21 2 minutes later Sammy and Chaunte came back to  
01:46:23 3 the car without the girl, right?  
01:46:25 4 A Yes.  
01:46:25 5 Q And then apparently Mr. Gwin said that "Sammy  
01:46:30 6 said she didn't have no money, so Chaunte cut  
01:46:33 7 her throat," right?  
01:46:34 8 A Yes.  
01:46:34 9 Q And then Gwin said he drove -- after that  
01:46:46 10 conversation, alleged conversation, they drove  
01:46:48 11 to his cousin's house, Charlotte Brown's house,  
01:46:53 12 right?  
01:46:53 13 A Yes.  
01:46:54 14 Q Where Mr. Gwin wanted to check on his drug-sale  
01:46:58 15 business?  
01:46:59 16 A Yes.  
01:46:59 17 Q And then according to Mr. Gwin, a month later  
01:47:13 18 Sammy was told -- he talked to Sammy and Sammy  
01:47:18 19 said -- told him that the girl who was found  
01:47:21 20 dead behind the house was the girl who was with  
01:47:24 21 them and that he made a cutting throat [sic]  
01:47:26 22 saying her throat got cut, right?  
01:47:29 23 A Yes.  
01:47:29 24 Q Okay. Now, Mr. Gwin, after denying any  
01:47:33 25 knowledge or involvement for over a day of

01:47:37 1 being -- in talking to you and your partner  
01:47:41 2 both in and out of custody and being  
01:47:42 3 polygraphed suddenly volunteers all this  
01:47:45 4 information after he was released from custody,  
01:47:47 5 right?  
01:47:48 6 A Yes.  
01:47:48 7 Q Can you explain why that -- that happened?  
01:47:50 8 A No.  
01:47:51 9 Q And you don't think that's unusual?  
01:47:56 10 A I don't recall how the interview happened.  
01:48:03 11 Q As you sit here today, you have no memory of  
01:48:06 12 how it happened?  
01:48:07 13 A That's correct.  
01:48:07 14 Q So you have no memory of the specific questions  
01:48:09 15 that you or your partner asked Mr. Gwin?  
01:48:12 16 A No.  
01:48:12 17 Q And you have no memory of his responses?  
01:48:15 18 A No.  
01:48:15 19 Q Other than how it's documented in these  
01:48:18 20 reports?  
01:48:18 21 A Correct.  
01:48:19 22 Q Okay. Is it accurate to say that the  
01:48:25 23 information that Mr. Gwin provided to you on  
01:48:29 24 the 25th about the Payne homicide and the  
01:48:33 25 manner of death was information you already

01:48:35 1 had?

01:48:38 2 A No.

01:48:39 3 Q Well, you already knew her neck had been cut,

01:48:43 4 correct?

01:48:43 5 A Yes.

01:48:44 6 Q Okay. So was there any information about

01:48:49 7 the -- the cause of her death that was new to

01:48:52 8 you that Mr. Gwin provided?

01:48:54 9 A He wasn't there when the incident happened.

01:49:04 10 When the murder happened, he was in the car, so

01:49:07 11 he would have no knowledge of what happened

01:49:11 12 back there, other than what was told to him.

01:49:12 13 Q And what was allegedly told to him was

01:49:15 14 information you already had, right?

01:49:18 15 A No, because we didn't know about Sammy Joe

01:49:21 16 Hadaway or Chaunte Ott prior to his statement.

01:49:25 17 Q Okay. Putting aside the Sammy Joe and Chaunte

01:49:30 18 Ott piece in terms of the cause of -- what

01:49:32 19 caused Ms. Payne's death, there was no new

01:49:34 20 information that Mr. Gwin was able to provide

01:49:35 21 to you?

01:49:38 22 A Correct.

01:49:38 23 Q And in terms of the location of where her body

01:49:42 24 was found, you also had that information --

01:49:45 25 A Yes.

01:49:45 1 Q -- prior to Mr. Gwin?

01:49:47 2 A Yes.

01:49:47 3 Q Okay. Okay. Is it fair to say that the next

01:50:08 4 thing you did on the Payne homicide

01:50:13 5 investigation was -- well, strike that.

01:50:16 6 After your interview with Mr. Gwin,

01:50:20 7 you and your partner drove him home, right?

01:50:24 8 A Yes.

01:50:24 9 Q And then you came back and briefed the next

01:50:27 10 shift on the follow-up investigation you were

01:50:29 11 requesting?

01:50:29 12 A Correct.

01:50:29 13 Q And that was to find Sam Hadaway?

01:50:32 14 A Yes.

01:50:32 15 Q Was it also to find Chaunte Ott?

01:50:36 16 A I don't recall.

01:50:36 17 Q Okay. And then you did -- I don't know if I

01:50:51 18 asked you this, so forgive me if I already did.

01:50:55 19 Prior to your involvement in the Payne

01:50:57 20 homicide, had you had any interactions with my

01:51:00 21 client, Sam Hadaway, that you're aware of?

01:51:02 22 A No.

01:51:02 23 Q How about with respect to Chaunte Ott? Prior

01:51:05 24 to your involvement in the Payne homicide

01:51:07 25 investigation, had you had any interactions

01:51:09 1 with Mr. Ott that you're aware of?

01:51:11 2 A No.

01:51:14 3 Q And how about Mr. Gwin?

01:51:15 4 A No.

01:51:16 5 Q How about Walter J.D. Moffett? Had you had

01:51:24 6 interactions with him --

01:51:25 7 A No.

01:51:25 8 Q -- that you're aware of? No?

01:51:30 9 Okay. Do you remember back in

01:51:41 10 October '95 what days you were working?

01:51:44 11 A No.

01:51:44 12 Q Do you remember, was there, like, a rotation?

01:51:48 13 Like, you'd work five days on, two days off,

01:51:50 14 and it would rotate back then?

01:51:52 15 A I don't recall. They changed the shifts for

01:51:58 16 seven days on, three days off. Then it was

01:52:03 17 five days on, two days off, four days on, two

01:52:07 18 days off. They switched it up, so back then I

01:52:09 19 don't know.

01:52:09 20 Q It's hard to remember?

01:52:10 21 A I don't remember.

01:52:11 22 Q Is it fair to say while you were working the

01:52:14 23 cold case squad with DeValkenaere during this

01:52:18 24 time frame you were working days, though?

01:52:20 25 A Yes.

01:52:20 1 Q Okay. Okay. The next thing that you remember  
01:52:36 2 being involved in was your interrogation of  
01:52:38 3 Mr. Hadaway, right?  
01:52:40 4 A Correct.  
01:52:40 5 Q Okay. And like you said earlier, you were  
01:52:50 6 aware when you were going to interrogate  
01:52:53 7 Mr. Hadaway that he had already been  
01:52:55 8 interrogated by several of your colleagues,  
01:52:58 9 right?  
01:52:58 10 A Yes.  
01:52:59 11 Q And so he was interrogated by Eric Moore on  
01:53:04 12 October 25th, right?  
01:53:06 13 A Yes.  
01:53:06 14 Q And he was then interrogated by Detective Dubis  
01:53:14 15 and Percy Moore, right?  
01:53:16 16 A Yes.  
01:53:16 17 Q And then eventually you guys spoke to him on  
01:53:20 18 the 27th, right?  
01:53:22 19 A Correct.  
01:53:23 20 Q And so you were aware at the time that you were  
01:53:37 21 talking to Mr. Hadaway that -- that he had  
01:53:46 22 denied any knowledge or involvement to Eric  
01:53:50 23 Moore, right?  
01:53:51 24 A Yes.  
01:53:51 25 Q And he had denied any knowledge or involvement

01:53:54 1 to Detective Dubis and Percy Moore, right?

01:53:57 2 A Correct.

01:53:58 3 Q Okay.

01:54:56 4 MS. DONNELL: Okay. I apologize.

01:54:58 5 Can we go off the record for just a second?

01:55:03 6 Can we go off the record, please?

01:55:05 7 THE VIDEOGRAPHER: Going off the  
01:55:06 8 record at 1:55.

01:55:08 9 (Brief recess taken.)

02:00:26 10 THE VIDEOGRAPHER: We're back on the  
02:00:27 11 record at 2:00.

02:00:29 12 MS. DONNELL: Thanks.

02:00:29 13 BY MS. DONNELL:

02:00:33 14 Q Okay. Detective Buschmann, you had said  
02:00:38 15 earlier that you had an independent  
02:00:41 16 recollection of your interrogation of my  
02:00:45 17 client, Sammy Hadaway, right?

02:00:47 18 A I reviewed his statement.

02:00:48 19 Q You reviewed his handwritten statement that is  
02:00:52 20 in your handwriting?

02:00:53 21 A Yes.

02:00:53 22 Q And you did that a couple weeks ago to prepare  
02:00:56 23 for your deposition?

02:00:57 24 A Correct.

02:00:57 25 Q Okay. And in doing that, it refreshed your

02:01:01 1 recollection as to some of -- to have an  
02:01:05 2 independent recollection of your interactions  
02:01:08 3 with Mr. Hadaway; is that true?  
02:01:09 4 A Yes.  
02:01:09 5 Q Okay. Can you tell me your independent  
02:01:12 6 recollection of this independent, you know,  
02:01:16 7 refreshed recollection of your interactions  
02:01:18 8 with Mr. Hadaway on October 27th, 1995?  
02:01:26 9 A I guess, can you repeat the question?  
02:01:30 10 Q Sure. Please describe for me your independent  
02:01:33 11 recollection, what you remember as you sit here  
02:01:37 12 today, of your interactions with Mr. Hadaway on  
02:01:40 13 October 27th, 1995.  
02:01:44 14 A My first recollection was getting him from the  
02:01:50 15 city jail as he had summoned a jailer that he  
02:01:58 16 wished to talk to the detectives, and so I was  
02:02:02 17 assigned to go and bring him down, and Jim and  
02:02:07 18 I put him in an interview room. I advised him  
02:02:15 19 of his constitutional rights which I had him  
02:02:22 20 read from a card. He indicated he understood  
02:02:25 21 his rights and that he was willing to answer  
02:02:27 22 questions, and then we just went into talking  
02:02:30 23 to him. I said, "You wanted to talk to us;  
02:02:34 24 what did you want to tell us," words to that  
02:02:36 25 effect, and he went on to talk about the

02:02:39 1 incident in which he was under arrest for.

02:02:44 2 Q Okay. As you sit here today, do you know how

02:03:15 3 long Mr. Hadaway had been under arrest for the

02:03:18 4 Payne homicide at the time you were talking to

02:03:21 5 him?

02:03:22 6 A No.

02:03:22 7 Q Eric Moore, your colleague, had an

02:03:39 8 interrogation of him that was at 3:25 p.m. on

02:03:43 9 October 25th, right?

02:03:48 10 A Okay.

02:03:48 11 Q And your conversation with him was starting at

02:03:51 12 12:30 on October 27th?

02:03:57 13 A I think it was 2:00.

02:04:00 14 Q 2:00 was when you started? Yes, sorry.

02:04:06 15 Thank -- let's see -- thank you for clarifying

02:04:09 16 at 2:00.

02:04:09 17 A Yes.

02:04:10 18 Q Let's mark this as the next exhibit, Exhibit

02:04:14 19 12.

02:04:15 20 (Exhibit Nos. 12 and 13 were marked.)

02:04:39 21 BY MS. DONNELL:

02:04:40 22 Q Okay. I've handed you what I've designated as

02:04:43 23 Exhibits 12 and 13 to your deposition. Do you

02:04:45 24 recognize Exhibit 12 as the handwritten

02:04:47 25 statement in your handwriting of Mr. Hadaway

02:04:50 1 from your interrogation of him on October 27th,  
02:04:56 2 1995?

02:04:57 3 A Yes.

02:04:57 4 Q And it also includes a signed Miranda waiver;  
02:05:02 5 is that right?

02:05:02 6 A Yes.

02:05:02 7 Q With your signature on it?

02:05:04 8 A Yes.

02:05:05 9 Q And it also includes a -- the last page is a  
02:05:10 10 diagram, right?

02:05:11 11 A Yes.

02:05:18 12 Q And that diagram is part -- in part is in your  
02:05:22 13 handwriting as well?

02:05:23 14 A It's both my handwriting and Hadaway's.

02:05:27 15 Q Okay. If I give you this pink pen, can you  
02:05:31 16 identify on the last page of Exhibit 12 what  
02:05:34 17 part's in your handwriting, other than your  
02:05:37 18 signature, and what part's in Mr. Hadaway's?  
02:05:41 19 So can you indicate in pink -- in red what's  
02:05:45 20 your -- circle what's your --

02:05:46 21 A What's mine?

02:05:47 22 Q Yeah, what's yours.

02:06:05 23 A Well, my -- I drew the -- the layout of the map  
02:06:10 24 for 7th and Burleigh.

02:06:12 25 Q Okay. So is that your writing on the last page

02:06:15 1 of Exhibit 12 that says "N. 7th"? That's your  
02:06:19 2 handwriting?

02:06:20 3 A Yes.

02:06:20 4 Q Okay. Can you circle it?

02:06:20 5 A (Witness complies.)

02:06:24 6 Q And "West Burleigh" down at the bottom, that's  
02:06:26 7 yours?

02:06:27 8 A Yes.

02:06:27 9 Q And the north indication at the top orientating  
02:06:30 10 the map, that's yours?

02:06:32 11 A Yes.

02:06:33 12 Q Okay. And then this "X-way" over on the left,  
02:06:38 13 is that you -- your handwriting as well, it  
02:06:39 14 looks like?

02:06:40 15 A Yeah.

02:06:40 16 Q Okay. And then the street designation that  
02:06:44 17 says 7th and Burleigh, is that also yours on  
02:06:50 18 the blocks? I'm sorry. So, like, these  
02:06:53 19 squares, did you draw these squares indicating  
02:06:56 20 the streets?

02:06:56 21 A Yes.

02:06:57 22 Q Okay. How about the "abandoned house" with an  
02:07:03 23 arrow? Is that your handwriting?

02:07:04 24 A No.

02:07:05 25 Q Okay. How about "mattress"? Is that your

02:07:07 1 handwriting?

02:07:08 2 A No.

02:07:08 3 Q And how about the squiggly lines and then it

02:07:15 4 says, I don't know, "CB" and "HS"? Is the "CB"

02:07:19 5 your initials?

02:07:20 6 A Yes.

02:07:20 7 Q And that's the alley being crossed out?

02:07:23 8 A Yes.

02:07:23 9 Q And you're initialing that the same way Hadaway

02:07:28 10 is?

02:07:28 11 A Yes.

02:07:28 12 Q Although his initials are backwards, right?

02:07:33 13 A Yeah.

02:07:34 14 Q Okay.

02:07:34 15 MS. GEHLING: Or just upside down.

02:07:36 16 THE WITNESS: Or upside down, yeah.

02:07:37 17 BY MS. DONNELL:

02:07:38 18 Q Okay. How about the indication of a car?

02:07:41 19 A The "car" is my handwriting.

02:07:43 20 Q Okay.

02:07:44 21 A The car itself isn't; it was his.

02:07:48 22 Q Hadaway's?

02:07:49 23 A Yes.

02:07:49 24 Q Okay. The "abandoned house" you said is not

02:07:53 25 your writing?

02:07:54 1 A No .

02:07:54 2 Q That's Hadaway's writing?

02:07:56 3 A Yes .

02:07:56 4 Q Okay. And how about the three blocks? One is

02:08:02 5 indicating an abandoned house, and there's two

02:08:04 6 other squares. Who drew those?

02:08:06 7 A I don't recall .

02:08:12 8 Q It could have been you?

02:08:13 9 A It could have been me. I'm thinking it was

02:08:16 10 him.

02:08:16 11 Q But you don't really know one way -- you're not

02:08:21 12 sure?

02:08:21 13 A I'm not sure .

02:08:21 14 Q I don't want you to speculate. So are you

02:08:24 15 uncertain who put the squares or the

02:08:26 16 rectangles, excuse me, for the house

02:08:27 17 indications?

02:08:27 18 A I thought that's what we were talking about .

02:08:29 19 Q Yeah, I'm saying to be clear, you don't recall

02:08:32 20 one way or the other whether it was you or Sam

02:08:34 21 who did that?

02:08:35 22 A Correct .

02:08:35 23 Q Okay. How about the square for the mattress?

02:08:38 24 A That was him .

02:08:38 25 Q And the writing that says "mattress" or --

02:08:41 1 A His.

02:08:41 2 Q -- "matters"?

02:08:43 3 A That was his.

02:08:45 4 Q Okay.

02:08:45 5 MS. GEHLING: And, I'm sorry, I

02:08:46 6 just -- did he say the writing for the car was

02:08:50 7 his but the square was --

02:08:50 8 MS. DONNELL: You know, I can --

02:08:54 9 MS. GEHLING: I'm sorry.

02:08:54 10 MS. DONNELL: Well, if you want to

02:08:58 11 clean it up later you can, but...

02:08:59 12 MS. GEHLING: Yeah.

02:08:59 13 BY MS. DONNELL:

02:09:00 14 Q The "car," the "C-A-R," that's your

02:09:01 15 handwriting?

02:09:02 16 A Yes.

02:09:02 17 Q And you're not sure who did the rectangle to

02:09:06 18 indicate the car, or do you know who did that?

02:09:08 19 A That would have been Sam.

02:09:10 20 Q Okay. Okay. How about these squiggly lines in

02:09:16 21 the back and then, I don't know, it looks like

02:09:18 22 a circle and a triangle and some other things?

02:09:21 23 Do you know what that indicates?

02:09:22 24 A I don't know what that is. I don't remember.

02:09:23 25 Q Do you know who did it?

02:09:25 1 A No.

02:09:25 2 Q Okay. And Page -- or Exhibit 12, this is all

02:09:38 3 in your handwriting except where Mr. Hadaway

02:09:41 4 has signed it; is that right?

02:09:43 5 A Where he signed it and where my partner signed

02:09:46 6 it.

02:09:46 7 Q Okay. And then at the very -- let's see -- the

02:09:51 8 third-to-last page, Page MPD SJH747 --

02:10:01 9 A Okay.

02:10:02 10 Q -- is that -- or the last lines "I have had the

02:10:08 11 above statement read to me and it is true, Sam

02:10:11 12 Hadaway" with the date 10/27/95, that's

02:10:17 13 Mr. Hadaway's?

02:10:17 14 A Yes.

02:10:17 15 Q And then "I am sorry it had to turn out this

02:10:21 16 way and am sorry I had to lie the first two

02:10:24 17 days, but it came to me to tell the truth and

02:10:27 18 now I am here, Sam Hadaway, end 4:25," was that

02:10:27 19 all Mr. Hadaway?

02:10:27 20 A Yes.

02:10:30 21 Q The "2 cans of orange soda," is that your

02:10:34 22 writing again?

02:10:35 23 A Yes.

02:10:35 24 Q Okay. And that last part -- those two last

02:10:37 25 parts I've just read from Exhibit 12, that was

02:10:39 1 sort of part of your protocol to have the  
02:10:42 2 individual write in their own words that the  
02:10:44 3 statement had been either read to them or they  
02:10:47 4 read it to themselves, right?  
02:10:47 5 A Yes, my own way I did it, yes.  
02:10:50 6 Q And then it was also your own way that you did  
02:10:53 7 it to give the individual an opportunity to add  
02:10:56 8 anything else that they wanted to?  
02:10:57 9 A Yes.  
02:10:58 10 Q Okay. Thank you. Now, you had indicated that  
02:11:07 11 you had Mr. Hadaway read the Miranda rights,  
02:11:10 12 right?  
02:11:11 13 A Yes.  
02:11:11 14 Q On a photocopy card, right?  
02:11:15 15 A Yes.  
02:11:16 16 Q And is that what you had him read which is the  
02:11:19 17 second-to-last page of Exhibit 12, Bates 748?  
02:11:24 18 A Yes.  
02:11:24 19 Q And he's initialed it here and signed it along  
02:11:27 20 with you?  
02:11:28 21 A Yes.  
02:11:28 22 Q Now, was that typical that you did in your  
02:11:31 23 interrogations for everybody?  
02:11:33 24 A Yes.  
02:11:34 25 Q And you would include the signed Miranda

02:11:36 1 statements for everybody?

02:11:40 2 A As I recall, yes.

02:11:43 3 Q Did you have some concern that Mr. Hadaway

02:11:46 4 wasn't able to read?

02:11:50 5 A I wanted to make sure that he could read.

02:11:52 6 Q Why did you want to make sure he could read?

02:11:55 7 A Because I was -- part of building my rapport

02:11:59 8 with him was to know that he could read and

02:12:01 9 understand my questions and that he was

02:12:03 10 coherent enough to go on with the interview.

02:12:05 11 Q Did you have an understand -- well, did you

02:12:09 12 have an impression of Mr. Hadaway that he may

02:12:13 13 have limited education?

02:12:15 14 A Not that I recall.

02:12:16 15 Q How about limited cognitive functioning?

02:12:19 16 A No, not that I recall.

02:12:20 17 Q Do you remember observing him having weakness

02:12:24 18 on the left side of his body?

02:12:25 19 A I learned that, that he had cerebral palsy.

02:12:30 20 Q When did you learn that Sam Hadaway had

02:12:36 21 cerebral palsy?

02:12:36 22 A I believe when he was interviewed by Detective

02:12:39 23 Simons.

02:12:40 24 Q Okay. Did you -- did Mr. Hadaway tell you in

02:12:49 25 part of the time building your rapport with him

02:12:51 1 that he had cerebral palsy?

02:12:53 2 A Not that I recall.

02:12:55 3 Q And you went and got him from the jail and

02:12:56 4 transported him up to the CIB, correct?

02:13:00 5 A Yes.

02:13:00 6 Q So you observed Sam Hadaway walking?

02:13:04 7 A Yeah. He would have walked with me.

02:13:06 8 Q Do you remember observing any limitations in

02:13:09 9 his ability to walk?

02:13:10 10 A No.

02:13:10 11 Q Did you -- did Mr. Hadaway tell you that he had

02:13:18 12 a seizure disorder?

02:13:20 13 A Not that I recall.

02:13:21 14 Q Did Mr. Hadaway convey to you that he took

02:13:25 15 medicine to prevent him from suffering

02:13:28 16 seizures?

02:13:29 17 A Not that I recall.

02:13:30 18 Q And you don't recall providing any medication

02:13:32 19 for Mr. Hadaway, correct?

02:13:34 20 A No.

02:13:35 21 Q Do you deny that Mr. Hadaway told you he had a

02:13:41 22 seizure disorder, or you just don't know one

02:13:44 23 way or the other?

02:13:45 24 A I don't remember him saying anything about his

02:13:48 25 seizure disorder.

02:13:49 1 Q So he could have; you just don't remember?

02:13:51 2 A I don't recall.

02:13:52 3 Q Okay. But, I mean, by saying you don't recall

02:13:55 4 means he could have told you; you just don't

02:13:57 5 recall, correct?

02:13:59 6 A I would have documented it somewhere. If he

02:14:02 7 needed seizure medication, we would have got it

02:14:04 8 for him.

02:14:05 9 Q Is it your testimony that if Mr. Hadaway had

02:14:09 10 told you he had a seizure disorder you would

02:14:11 11 have put it in his statement?

02:14:13 12 A If he requested his medication, we would have

02:14:16 13 gotten it for him.

02:14:18 14 Q Would you have documented it if you did it?

02:14:27 15 A If he would have requested it, it would have

02:14:29 16 been documented.

02:14:30 17 Q Okay. And it's your testimony that you don't

02:15:04 18 believe you knew Sam Hadaway had cerebral palsy

02:15:10 19 until he was taken to be polygraphed?

02:15:13 20 A As I recall today, the way I found out about

02:15:19 21 cerebral palsy was through Detective Simons'

02:15:21 22 interview with him.

02:15:23 23 Q Okay. And you realize that that interview with

02:15:25 24 Detective Simons occurred after this October

02:15:27 25 27th interview, correct?

02:15:29 1 A That's correct.

02:15:29 2 Q Okay. Did you at any point in time in your

02:15:47 3 interrogation of Mr. Hadaway on October 27th,

02:15:50 4 1995, threaten him that he would spend 80 years

02:15:55 5 in prison for the murder of Jessica Payne?

02:15:57 6 A No.

02:15:58 7 Q It's your testimony that that didn't occur?

02:16:02 8 A That's correct.

02:16:03 9 Q Did you witness your partner, James

02:16:06 10 DeValkenaere, threaten Mr. Hadaway that he

02:16:09 11 would go to prison for 80 years for Jessica

02:16:12 12 Payne's murder?

02:16:12 13 A No.

02:16:13 14 Q Is it your testimony that that did not occur?

02:16:16 15 A Yes.

02:16:16 16 Q Did you make any promise to Mr. Hadaway that if

02:16:22 17 he implicated Chaunte Ott in the murder of

02:16:24 18 Jessica Payne that he'd only have to do five

02:16:26 19 years?

02:16:27 20 A No.

02:16:27 21 Q Did you witness your partner promise

02:16:31 22 Mr. Hadaway that if he implicated Chaunte Ott

02:16:34 23 in the murder of Jessica Payne he'd only have

02:16:37 24 to serve five years in prison?

02:16:39 25 A No.

02:16:39 1 Q Is it your testimony that didn't occur?

02:16:42 2 A Yes.

02:16:42 3 Q Did you threaten Sam Hadaway that if he went to

02:16:49 4 prison he'd be raped?

02:16:50 5 A No.

02:16:50 6 Q Did your partner, James DeValkenaere, threaten

02:16:53 7 Mr. Hadaway that if he went to prison he'd be

02:16:57 8 raped?

02:16:58 9 A No.

02:16:58 10 Q Is it your testimony that didn't occur?

02:17:00 11 A Yes.

02:17:00 12 Q Did you use any physical threat of violence

02:17:03 13 with Mr. Hadaway when you interrogated him?

02:17:05 14 A No.

02:17:05 15 Q Did you push over any furniture in the

02:17:08 16 interrogation room during your interrogation of

02:17:09 17 him?

02:17:10 18 A No.

02:17:10 19 Q Did you witness James DeValkenaere use any

02:17:13 20 threat of physical violence with Mr. Hadaway?

02:17:17 21 A No.

02:17:18 22 Q Did you witness your partner turn over any

02:17:20 23 furniture or chairs in the interrogation room

02:17:22 24 during the interrogation of Sam Hadaway?

02:17:25 25 A No.

02:17:27 1 Q Was any physical force used with Mr. Hadaway?

02:17:30 2 A No.

02:17:30 3 Q Did Mr. Hadaway deny any knowledge or

02:17:38 4 involvement in the Payne homicide in your

02:17:41 5 interrogation of him?

02:17:44 6 A No.

02:17:45 7 Q Do you have any knowledge of whether

02:17:51 8 Mr. Hadaway was provided his seizure medicine

02:17:53 9 in the time that he was in custody prior to

02:17:56 10 your interrogation of him?

02:17:58 11 MS. GEHLING: Objection; foundation.

02:18:02 12 MS. DONNELL: You can answer.

02:18:03 13 THE WITNESS: I wasn't aware he was

02:18:05 14 on medicine at the time.

02:18:05 15 BY MS. DONNELL:

02:18:06 16 Q So it's true you have no knowledge about

02:18:08 17 whether he was provided any medicine during his

02:18:11 18 custody, correct?

02:18:11 19 A I don't have -- no, I don't.

02:18:13 20 Q Okay. Do you have any knowledge, personal

02:18:18 21 knowledge, of Mr. Hadaway's meals he was

02:18:25 22 provided?

02:18:26 23 A No.

02:18:27 24 Q Do you know how long you were allowed to hold

02:18:39 25 somebody in custody before charges were

02:18:42 1 approved at that time?

02:18:45 2 A We had 48 hours to establish probable cause,

02:18:50 3 and after that's established, then you have 72

02:18:52 4 hours for charging.

02:18:54 5 Q Was there probable cause to hold -- to arrest

02:19:00 6 Mr. Hadaway -- well, strike that.

02:19:02 7 Was there probable cause to hold

02:19:04 8 Mr. Hadaway prior to your interrogation of him?

02:19:06 9 MS. GEHLING: Objection; foundation.

02:19:12 10 You can answer if you know.

02:19:15 11 THE WITNESS: I don't recall.

02:19:17 12 BY MS. DONNELL:

02:19:17 13 Q Based on the information that Mr. Gwin had

02:19:20 14 allegedly provided to you and your partner,

02:19:24 15 James DeValkenaere, was there probable cause,

02:19:26 16 in your view, to arrest Mr. Hadaway for the

02:19:29 17 Payne homicide?

02:19:30 18 A Yes.

02:19:30 19 Q Okay. Was there probable cause to seek charges

02:19:36 20 for Mr. Hadaway prior to your interrogation of

02:19:40 21 him on October 27th, 1995, at 2:00 p.m.?

02:19:45 22 A No.

02:19:45 23 Q Why not?

02:19:46 24 A It didn't -- there was no admission on his part

02:19:52 25 of being involved and Mr. Gwin wasn't a witness

02:19:56 1 to the homicide.

02:19:58 2 Q Is it fair to say that if in your interrogation

02:20:08 3 of Mr. Hadaway he had denied involvement or

02:20:13 4 knowledge, you would have had to let him go?

02:20:17 5 A Yes.

02:20:17 6 Q Okay. Are you aware as you sit here today of

02:20:22 7 what was the basis of probable cause to charge

02:20:25 8 Mr. Hadaway with Jessica Payne's murder?

02:20:28 9 A Based on his own statement.

02:20:30 10 Q Anything else?

02:20:32 11 A And Gwin's statement.

02:20:34 12 Q Anything else?

02:20:36 13 A No.

02:20:37 14 Q Is it fair to say none of the -- there was no

02:20:42 15 eyewitnesses to -- that ever linked Mr. Hadaway

02:20:46 16 to the Payne homicide?

02:20:47 17 A Correct.

02:20:47 18 Q And there was no physical evidence linking Sam

02:20:50 19 Hadaway to the Jessica Payne homicide?

02:20:51 20 A Correct.

02:20:52 21 Q And Mr. Ott never implicated Mr. Hadaway,

02:21:01 22 correct?

02:21:02 23 A No.

02:21:02 24 Q Okay. Whatever's easiest to look at, if you

02:21:42 25 want to look at Exhibit 12 or Exhibit 13 --

02:21:44 1 well, actually, before we do that, do you have  
02:21:47 2 any memory of any of the specific questions you  
02:21:51 3 asked Mr. Hadaway in this or -- well, strike  
02:21:55 4 that.

02:21:55 5 Do you have any memory of the  
02:21:58 6 specific questions that you asked Mr. Hadaway  
02:22:01 7 other than the one you just testified to "What  
02:22:03 8 did you want to tell us?"

02:22:05 9 A No.

02:22:06 10 Q Was this statement the product of a  
02:22:11 11 back-and-forth of question or answering?

02:22:14 12 A Yes.

02:22:14 13 Q This isn't, like, a verbatim account of  
02:22:17 14 Mr. Hadaway just telling you a bunch of things,  
02:22:20 15 right?

02:22:21 16 A Correct.

02:22:21 17 Q And I believe you testified earlier your  
02:22:23 18 practice was, you know, to have some background  
02:22:25 19 questions, get a -- ask questions about the  
02:22:26 20 incident, and then go back and write it out,  
02:22:29 21 right?

02:22:29 22 A Yes.

02:22:29 23 Q And that's the protocol you followed for  
02:22:32 24 Exhibit 12?

02:22:33 25 A Yes.

02:22:34 1 Q Okay. In Exhibit 12 or 13, there's a portion  
02:22:41 2 in which Mr. Hadaway allegedly said that  
02:22:44 3 Mr. Ott struck Mr. Payne -- Ms. Payne in the  
02:22:47 4 face a number of times. Do you remember that?  
02:22:49 5 A Yes.  
02:22:49 6 Q Was there any evidence of bruising on  
02:22:52 7 Ms. Payne's face?  
02:22:53 8 A I don't recall.  
02:22:55 9 Q I'm going to mark this as Exhibit 14. This is  
02:23:05 10 the medical examiner's report.  
02:23:18 11 (Exhibit No. 14 was marked.)  
02:23:18 12 BY MS. DONNELL:  
02:23:18 13 Q Okay. Mr. Buschmann, I'm handing you  
02:23:21 14 Exhibit 14 which is the medical examiner and  
02:23:24 15 toxicology report for Jessica Payne dated  
02:23:25 16 August 30th, 1995, okay?  
02:23:27 17 A Hm-hm, yes.  
02:23:28 18 Q And this is something you read prior to your  
02:23:30 19 involvement on the Payne homicide, right?  
02:23:33 20 A Yes.  
02:23:33 21 Q Okay. And if you -- you can review it, but I  
02:23:38 22 can call your -- your attention to the page  
02:23:41 23 that has Bates stamps MPD952 and 953 where it  
02:23:46 24 says "Other Evidence of Trauma." It's -- it's  
02:23:50 25 Section 11, Page 17 of the M file, and it has

02:23:53 1 Bates stamp 952, and there's a subsection that  
02:24:03 2 says "Other Evidence of Trauma."  
02:24:07 3 A Okay.  
02:24:07 4 Q And it says "Other evidence of trauma is  
02:24:10 5 limited to areas of contusion inclusive of a  
02:24:11 6 small -- two small contusions along the medial  
02:24:15 7 right costal margin," right?  
02:24:17 8 A Yes.  
02:24:17 9 Q "A contusion on the left medial costal margin  
02:24:21 10 of the anterior chest wall," right?  
02:24:23 11 A Yes.  
02:24:23 12 Q "A contusion over the dorsum of the right  
02:24:25 13 hand"?  
02:24:26 14 A Yes.  
02:24:26 15 Q "A superficial abrasion along the left groin,"  
02:24:30 16 right?  
02:24:30 17 A Yes.  
02:24:30 18 Q And that's indicated as a "probable postmortem  
02:24:35 19 artifact," right?  
02:24:37 20 A Yes.  
02:24:37 21 Q Then there's "A series of contusions along the  
02:24:40 22 right leg anteriorly," and then there's various  
02:24:43 23 measurements of those contusions along the  
02:24:45 24 outside of the right leg, right?  
02:24:46 25 A Yes.

02:24:47 1 Q And then there's "Two contusions on the left  
02:24:49 2 anterior thigh" as well, right?  
02:24:52 3 A Yes.  
02:24:52 4 Q There is no evidence that the autopsy indicated  
02:24:58 5 of any bruising or contusions on Ms. Payne's  
02:25:01 6 face, right?  
02:25:03 7 A Correct.  
02:25:03 8 Q In terms of injuries to Ms. Payne, there's  
02:25:28 9 nothing that Mr. Hadaway provided to you that  
02:25:31 10 you didn't already know prior to your  
02:25:33 11 interrogation of him on the 27th of October,  
02:25:36 12 1995, correct?  
02:25:40 13 A To Ms. Payne's --  
02:25:41 14 Q Body.  
02:25:42 15 A -- body? Correct.  
02:25:44 16 Q And, in fact, the -- the statement that Chaunte  
02:25:49 17 Ott struck her in the face, there was no  
02:25:51 18 corroborating physical evidence in the  
02:25:53 19 photographs or the medical examiner's report,  
02:25:56 20 correct?  
02:25:56 21 A No.  
02:25:59 22 Q Okay. And -- and the same is true with the  
02:26:15 23 statement of Mr. Richard Gwin, you also knew  
02:26:19 24 the location that Ms. Gwin's [sic] body was  
02:26:22 25 found before you ever talked to Mr. Hadaway or

02:26:25 1 Gwin, correct?

02:26:27 2 A Yes.

02:26:27 3 Q Okay. Now, it's fair to say that after your

02:26:30 4 conversation with Mr. Hadaway -- well, strike

02:26:37 5 that.

02:26:37 6 The next thing you did was take

02:26:40 7 Mr. Hadaway to meet with Mark Williams; is that

02:26:43 8 right?

02:26:43 9 A That happened eventually, yes. I don't know

02:26:45 10 exactly when it happened.

02:26:47 11 Q Okay. Sorry, that might not be the next thing.

02:27:00 12 Do you recall that your conversation with

02:27:02 13 Chaunte Ott that you spoke about occurred

02:27:04 14 before you talked to Mr. Hadaway?

02:27:08 15 A I don't recall.

02:27:11 16 Q Okay. I'm going to show you Exhibit 15 to see

02:27:14 17 if it refreshes your recollection.

02:27:27 18 (Exhibit No. 15 was marked.)

02:27:28 19 BY MS. DONNELL:

02:27:28 20 Q I'm showing you what I've designated as

02:27:31 21 Exhibit 15 to your deposition. It's Bates

02:27:32 22 stamped MPD570. It's from M file 3084,

02:27:35 23 Section 4, Page 294. Do you see -- do you

02:27:38 24 recognize this supp report from your partner,

02:27:42 25 James DeValkenaere, memorializing a

02:27:44 1 conversation with Chaunte Ott on October 26th,  
02:27:47 2 1995?

02:27:47 3 A Yes.

02:27:48 4 Q And so that was the day before you talked to  
02:27:51 5 Sam Hadaway, right?

02:27:52 6 A That's correct.

02:27:52 7 Q And this is where Mr. Ott denied any  
02:27:56 8 involvement or knowledge of the Payne homicide,  
02:28:02 9 right?

02:28:02 10 A Correct.

02:28:03 11 Q Okay. This is 16.  
02:28:21 12 (Exhibit No. 16 was marked.)

02:28:21 13 BY MS. DONNELL:

02:28:21 14 Q Mr. Buschmann, I'm handing you what I've  
02:28:24 15 designated as Exhibit 16 to your deposition.

02:28:26 16 This has Bates stamp MPD1162. Do you recognize  
02:28:32 17 Exhibit -- and it's from M file 3084, Section  
02:28:35 18 14, Page 1. Do you recognize Exhibit 16 as the  
02:28:39 19 supp report for the charging conference that  
02:28:41 20 occurred on Monday, October 30th?

02:28:44 21 A Yes.

02:28:44 22 Q And that was with District Attorney Mark  
02:28:46 23 Williams?

02:28:47 24 A Correct.

02:28:47 25 Q And Mark Williams was the homicide DA, right?

02:28:52 1 A Correct.

02:28:52 2 Q And so you worked with him frequently even

02:28:55 3 before this homicide investigation?

02:28:59 4 A Yes.

02:28:59 5 Q Okay. Okay. Okay. The supp report you

02:29:26 6 prepared is dated November 6th, 1995; is that

02:29:31 7 right?

02:29:31 8 A Yes.

02:29:31 9 Q And so you met first for a charging conference

02:29:34 10 on October 30th; is that right?

02:29:38 11 A Yes.

02:29:39 12 Q But charges were not approved until the

02:29:43 13 following Monday on November 6th?

02:29:45 14 A Yes.

02:29:46 15 Q Okay. And did Mr. Williams indicate he had

02:29:54 16 concerns about the investigation and things he

02:29:58 17 wanted followed up on before he was willing to

02:30:00 18 charge Mr. Hadaway with the Payne homicide?

02:30:05 19 A Yes.

02:30:05 20 Q What was Mr. Williams concerned about?

02:30:08 21 A He wanted to make sure that both Gwin and

02:30:12 22 Hadaway were telling the truth.

02:30:14 23 Q Did Mark Williams indicate to you why he had

02:30:20 24 concerns of whether Gwin and Hadaway were

02:30:24 25 telling the truth about implicating them- --

02:30:29 1 Mr. Hadaway and Mr. Ott in the Payne homicide?

02:30:32 2 A It was the only evidence we had implicating

02:30:35 3 Chaunte Ott in the homicide.

02:30:41 4 Q Was Mark Williams concerned that there were no

02:30:52 5 eyewitnesses -- well, strike that.

02:30:53 6 Was Mark Williams concerned that

02:30:56 7 there was no physical evidence to corroborate

02:30:58 8 the statements?

02:31:00 9 MS. GEHLING: Objection; foundation.

02:31:01 10 THE WITNESS: Not that I recall.

02:31:03 11 BY MS. DONNELL:

02:31:06 12 Q Was Mark Williams concerned about Mr. Gwin as a

02:31:13 13 reliable witness?

02:31:14 14 MS. GEHLING: Objection; foundation.

02:31:15 15 THE WITNESS: I don't recall.

02:31:16 16 BY MS. DONNELL:

02:31:17 17 Q How about with respect to Mr. Hadaway? Was he

02:31:20 18 concerned about Mr. Hadaway?

02:31:22 19 MS. GEHLING: Objection; foundation.

02:31:23 20 THE WITNESS: I don't recall.

02:31:24 21 BY MS. DONNELL:

02:31:25 22 Q Do you recall him expressing any concerns to

02:31:27 23 you other than what you've just testified to

02:31:29 24 that the only evidence implicating Mr. Ott was

02:31:31 25 the two witness statements by Gwin and Hadaway?

02:31:34 1 A No.

02:31:35 2 Q Did -- well, Mr. Hadaway was taken to be

02:31:46 3 polygraphed the following day -- well, two days

02:31:50 4 later on November 1st, right?

02:31:51 5 A Yes.

02:31:51 6 Q Was that your decision?

02:31:57 7 A No.

02:31:57 8 Q Whose decision was it to polygraph Sam Hadaway?

02:32:01 9 A I believe it was the -- Mr. Williams'.

02:32:04 10 Q Why do you believe it was Mr. Williams'?

02:32:06 11 A Because he's the one that had the concerns

02:32:08 12 about both Hadaway and Gwin telling the truth.

02:32:15 13 I don't know -- I'm going to say I don't know

02:32:18 14 for sure who requested the polygraph.

02:32:21 15 Q Okay. Thank you for clarifying. When you say

02:32:26 16 Williams was the one -- Mark Williams was the

02:32:29 17 one that had concerns about Gwin and Hadaway

02:32:32 18 telling the truth about the Payne homicide and

02:32:35 19 any knowledge of it, did you share that concern

02:32:40 20 back in October/November 1995?

02:32:45 21 A Who did I -- who would I have shared that

02:32:48 22 concern with?

02:32:48 23 Q Did you share Mark Williams' concern about Gwin

02:32:51 24 and Hadaway telling the truth?

02:32:54 25 A Not that I recall.

02:32:55 1 Q You recall that being the prosecutor's concern,  
02:32:58 2 but not yours?

02:33:00 3 A You're -- oh, I don't understand -- I didn't  
02:33:03 4 understand the question.

02:33:04 5 Q Oh, thank you. Thanks for letting me know.  
02:33:06 6 I'm happy to rephrase.

02:33:07 7 So you said Mark Williams had  
02:33:10 8 concerns about Gwin and Hadaway telling the  
02:33:11 9 truth about what they said implicating  
02:33:13 10 Mr. Hadaway and Mr. Ott in the Payne homicide,  
02:33:16 11 right?

02:33:16 12 A Correct.

02:33:16 13 Q And I'm asking did you share his concern? Did  
02:33:19 14 you have the same concern?

02:33:20 15 A Yes, I did.

02:33:21 16 Q Okay. Why were you concerned about Gwin and  
02:33:24 17 Hadaway telling the truth?

02:33:26 18 A Because that's the only evidence we had.

02:33:28 19 Q And why did that concern you as the homicide  
02:33:30 20 detective?

02:33:31 21 A Because I'm not going to try to have an  
02:33:34 22 innocent person charged with homicide without  
02:33:37 23 going the extra steps of finding out if the  
02:33:41 24 people that gave us statements were telling us  
02:33:43 25 the truth.

02:33:43 1 Q But you took Hadaway and Ott to a charging  
02:33:52 2 conference to seek charges or to seek approval  
02:33:55 3 of charges, right?  
02:33:59 4 A Not for Gwin.  
02:34:00 5 Q Sorry. You weren't seeking charges for Gwin.  
02:34:03 6 Thanks for clarifying. You were seeking  
02:34:05 7 charges for Hadaway and Ott?  
02:34:07 8 A We were having the case reviewed at that time.  
02:34:09 9 Q And you were -- you were only proposing to have  
02:34:13 10 charges for Hadaway and Ott?  
02:34:16 11 A Yes.  
02:34:17 12 Q But you are aware that there were criminal  
02:34:22 13 charges that were possible charges that could  
02:34:25 14 be brought against Mr. Gwin based on his  
02:34:28 15 involvement?  
02:34:29 16 MS. GEHLING: Objection; relevance.  
02:34:32 17 You can answer.  
02:34:32 18 THE WITNESS: No.  
02:34:33 19 BY MS. DONNELL:  
02:34:33 20 Q Well, do you understand what accessory to a  
02:34:36 21 murder is?  
02:34:37 22 A Yes. He didn't give a statement implicating  
02:34:42 23 himself in the murder at all.  
02:34:43 24 Q Okay. So it's your -- your belief back in  
02:34:47 25 October 1995 that there was no criminal charges

02:34:51 1 for Mr. Gwin's conduct?

02:34:53 2 A Correct.

02:34:53 3 Q Okay. Had you made that promise to Mr. Gwin

02:35:04 4 that he couldn't be charged?

02:35:06 5 A No.

02:35:06 6 Q Why not?

02:35:08 7 A Because it's not my decision.

02:35:10 8 Q Okay. And Mr. Gwin was being brought to the

02:35:13 9 charging conference, right?

02:35:14 10 A Correct.

02:35:14 11 Q Okay. But it sounds to me like your testimony

02:35:18 12 is neither you or DeValkenaere thought Gwin

02:35:21 13 should be charged?

02:35:24 14 A No.

02:35:25 15 Q Okay. And -- but at that point on October 30th

02:35:32 16 when you were setting up the charging

02:35:35 17 conference with Mark Williams, you did think

02:35:37 18 that charges -- you were seeking review for

02:35:39 19 charging Mr. Ott and Mr. Hadaway, correct?

02:35:43 20 A Yes.

02:35:44 21 Q And it was at that point that Mr. Williams

02:35:46 22 indicated he had some concerns, right?

02:35:49 23 A I don't recall how it went in the charging

02:35:56 24 conference. I don't have independent

02:35:59 25 recollection of my conversation or the charging

02:36:03 1 conference itself.

02:36:04 2 Q But at the time that you brought Mr. Hadaway

02:36:11 3 and Mr. Ott to the charging conference, at that

02:36:15 4 point there wasn't any follow-up you and your

02:36:17 5 partner had planned to do before seeking

02:36:20 6 charges, right?

02:36:23 7 A I'm not sure if -- I don't recall if we had

02:36:28 8 another plan or if anything else was planned.

02:36:31 9 I do not recall that.

02:36:32 10 Q Okay. Other than the polygraph of Mr. Hadaway,

02:36:48 11 do you have a recollection as you sit here

02:36:50 12 today of any other steps you took to address

02:36:54 13 the concern about the only evidence being

02:36:58 14 Mr. Gwin and Mr. Hadaway?

02:37:04 15 A No, I don't recall.

02:37:06 16 Q Okay. Okay. Do you remember anything as you

02:37:39 17 sit here today about taking Sam Hadaway to

02:37:45 18 be -- for a polygraph examination?

02:37:47 19 A No.

02:37:47 20 Q Did you review any of the documentation related

02:37:52 21 to Sam Hadaway's polygraph examination to

02:37:55 22 prepare for your deposition?

02:37:57 23 A Yes, I read the statement prepared by Detective

02:38:01 24 Simons.

02:38:02 25 Q Okay. Did that refresh your recollection in

02:38:04 1 any way as to your involvement in that  
02:38:07 2 polygraph examination and statement?  
02:38:09 3 A Yes.  
02:38:09 4 Q Do you have any independent recollection now as  
02:38:14 5 you sit here today of the polygraph  
02:38:16 6 examination?  
02:38:17 7 A I remember just being called in by Detective  
02:38:22 8 Simons to witness the statement.  
02:38:24 9 Q Okay. This is going to be 17. This is going  
02:38:24 10 to be 18 and 19.  
02:38:48 11 (Exhibit Nos. 17 through 19 were marked.)  
02:39:28 12 BY MS. DONNELL:  
02:39:28 13 Q Okay. Mr. Buschmann, I'm handing you what I've  
02:39:32 14 designated as Exhibits 17, 18, and 19, okay?  
02:39:35 15 A Okay.  
02:39:35 16 Q Do you recognize -- hopefully I didn't just  
02:39:45 17 give you my copy. Oh, got it. Okay. Do you  
02:39:50 18 recognize Exhibit 17 as the Milwaukee Police  
02:39:54 19 Department polygraph examination report for the  
02:39:56 20 examination that Examiner Simons conducted on  
02:40:01 21 November 1st of 1995 of Mr. Hadaway?  
02:40:05 22 A Yes.  
02:40:05 23 Q And this is -- you again were the investigator  
02:40:10 24 as the -- identified as the submitting officer,  
02:40:12 25 right?

02:40:12 1 A Yes.

02:40:12 2 Q And this indicates that Mr. Hadaway was

02:40:16 3 examined between 9:31 a.m. and 10:06 a.m. on

02:40:19 4 November 1st?

02:40:30 5 A I can't read this. Yes.

02:40:35 6 Q Okay. And then do you recognize Exhibit 18 as

02:40:43 7 the handwritten statement of the post-polygraph

02:40:45 8 interrogation of Mr. Hadaway on November 1st?

02:40:48 9 A Yes.

02:40:49 10 Q And that indicates that on November 1st at

02:40:52 11 11:26 a.m. the subject was questioned at CIB,

02:40:56 12 right?

02:40:56 13 A Correct.

02:40:56 14 Q And you were present for this as well?

02:40:58 15 A Yes.

02:40:59 16 Q Okay. And you've also signed it on the back of

02:41:02 17 Exhibit 18?

02:41:03 18 A Yes.

02:41:03 19 Q Okay. And then Exhibit 19, do you recognize

02:41:07 20 that to be the supplementary report prepared by

02:41:11 21 Detective Simons about the post-polygraph

02:41:14 22 examination?

02:41:14 23 A Yes.

02:41:15 24 Q Okay. Okay. And you again would have spoken

02:41:32 25 to Detective Simons before he conducted this

02:41:39 1 examination of Mr. Hadaway, right?

02:41:41 2 A Yes.

02:41:41 3 Q And at this point in time was Mr. Hadaway still

02:41:43 4 under arrest?

02:41:45 5 A Yes.

02:41:45 6 Q For the Payne homicide?

02:41:48 7 A Yes.

02:41:48 8 Q Okay. And here Mr. Hadaway was asked if

02:42:03 9 Chaunte Ott cut that white girl's throat,

02:42:11 10 right? Or these are the relevant questions,

02:42:13 11 okay?

02:42:13 12 A Oh, okay.

02:42:14 13 MS. GEHLING: Oh, okay.

02:42:15 14 BY MS. DONNELL:

02:42:16 15 Q The relevant questions at the polygraph

02:42:20 16 examination were "Did Chaunte Ott cut the white

02:42:24 17 girl's throat," right?

02:42:25 18 A Yes.

02:42:25 19 Q "Did you," meaning Sam Hadaway, "cut the white

02:42:25 20 girl's throat," right?

02:42:27 21 A Right.

02:42:27 22 Q "While the white girl was fighting, did you

02:42:30 23 help hold her down," right?

02:42:32 24 A Right.

02:42:32 25 Q And then "Did you have any sexual contact with

02:42:34 1 the white girl," right?

02:42:36 2 A Yes.

02:42:36 3 Q And those questions about -- or strike that.

02:42:40 4 The information that you wanted in

02:42:43 5 the context of the Payne homicide investigation

02:42:46 6 after meeting with Mark Williams would have --

02:42:50 7 well, strike that. Let me strike that.

02:42:52 8 These questions would have come from

02:42:56 9 you and Detective -- well, strike that again.

02:42:59 10 The questions that Detective Simons

02:43:02 11 decided to ask were after his meeting with you

02:43:06 12 and your partner, right, or you? I'm sorry,

02:43:10 13 just you.

02:43:13 14 MS. GEHLING: Object to foundation.

02:43:14 15 You can answer if you know.

02:43:15 16 THE WITNESS: Yes.

02:43:15 17 BY MS. DONNELL:

02:43:15 18 Q And this November 1st polygraph and

02:43:19 19 post-polygraph interview, your partner wasn't

02:43:22 20 present for, right?

02:43:23 21 A I don't believe so.

02:43:24 22 Q Okay. Do you, as you sit here today, know why

02:43:30 23 Detective Simons was asking Mr. Hadaway if he

02:43:33 24 had sexual contact with Jessica Payne?

02:43:36 25 MS. GEHLING: Objection; foundation.

02:43:39 1 THE WITNESS: I don't.

02:43:40 2 BY MS. DONNELL:

02:43:42 3 Q But it's fair to say Detective Simons, he was

02:43:47 4 only -- was his -- he was not a homicide

02:43:48 5 detective; he was a polygraph examiner?

02:43:50 6 A Correct, and he worked in the robbery unit.

02:43:54 7 Q But he didn't work in homicide?

02:43:57 8 A He did not.

02:43:58 9 Q Okay. Okay. Looking at -- calling your

02:44:15 10 attention to Exhibit 18, on the back half, do

02:44:41 11 you see the paragraph that says "During the

02:44:43 12 interview, Sam and Detective Simons role-played

02:44:46 13 on what he did and what the white girl did"?

02:44:49 14 Do you see that?

02:44:49 15 A Yes.

02:44:50 16 Q And that "Sam held my hands about [sic] my head

02:44:55 17 just as he did to the white girl" to Detective

02:44:58 18 Simons. Do you see that?

02:44:59 19 A Yes.

02:44:59 20 Q Does this refresh your recollection of you

02:45:01 21 observing Sam Hadaway and Detective Simons

02:45:05 22 role-playing?

02:45:12 23 A I don't remember the role-playing.

02:45:14 24 Q Okay.

02:45:14 25 A I don't recall that, but I know that this is

02:45:22 1 when I found out about the -- that I remembered  
02:45:26 2 about the weak left arm.

02:45:31 3 Q Okay. Did you make any promises to Sam Hadaway  
02:45:47 4 on November 1st that if he implicated Chaunte  
02:45:52 5 Ott he'd only have to go to prison for five  
02:45:56 6 years?

02:45:56 7 A No.

02:45:56 8 Q Did you threaten Mr. Hadaway at any point on  
02:45:59 9 November 1st that if he didn't implicate  
02:46:00 10 Chaunte Ott that he would go to prison?

02:46:01 11 A No.

02:46:05 12 Q Did you witness or observe Detective Simons  
02:46:09 13 make any promises to Sam Hadaway on November  
02:46:12 14 1st?

02:46:12 15 A No.

02:46:12 16 Q Did you witness Detective Simons make any  
02:46:18 17 threats to Sam Hadaway on November 1st?

02:46:21 18 A No.

02:46:22 19 Q And there's nothing -- no information that  
02:46:26 20 Mr. Hadaway provided on November 1st, 1995,  
02:46:29 21 that indicated any additional facts related to  
02:46:32 22 any injuries to Ms. Payne, right?

02:46:35 23 A Correct.

02:46:35 24 Q The only new information he provided was about  
02:46:40 25 holding her hand at some point?

02:46:42 1 A Correct.

02:46:43 2 Q Okay. Do you remember seeking a search warrant

02:46:58 3 to search Chaunte Ott's house?

02:47:02 4 A I know a search warrant was executed at his

02:47:06 5 house.

02:47:06 6 Q Were you part of the actual search?

02:47:37 7 A I would say yes. Yes.

02:47:39 8 Q Okay. Do you remember obtaining evidence

02:47:45 9 there?

02:47:45 10 A Yes.

02:47:45 11 Q What do you remember obtaining?

02:47:48 12 A Some knives.

02:47:50 13 Q Was there ever -- was there any evidence that

02:47:56 14 you obtained during the search of Chaunte Ott

02:48:00 15 that was ever linked by biological or

02:48:06 16 fingerprints or any other kind of evidence to

02:48:08 17 Ms. Payne's murder?

02:48:11 18 A Not conclusively.

02:48:13 19 Q What does that mean?

02:48:14 20 A The medical examiner looked at the instruments

02:48:19 21 we recovered --

02:48:23 22 Q Meaning the knives?

02:48:26 23 A Yeah. I'm sorry, yes.

02:48:28 24 -- and indicated that one of them

02:48:33 25 could have possibly been used.

02:48:34 1 Q That was just based on the shape or the size of  
02:48:39 2 the knife?

02:48:39 3 A I -- I don't recall.

02:48:40 4 Q But there was no blood swab taken from any  
02:48:43 5 knives or instruments obtained from Mr. Ott's  
02:48:47 6 home that was linked to the blood of Jessica  
02:48:49 7 Payne, correct?

02:48:50 8 A No.

02:48:50 9 Q Okay. This is Exhibit 20.  
02:49:03 10 (Exhibit No. 20 was marked.)  
02:49:03 11 BY MS. DONNELL:  
02:49:16 12 Q I'm handing you what I've just designated as  
02:49:20 13 Exhibit 20 to your deposition. This is an  
02:49:22 14 affidavit in support of a search warrant  
02:49:24 15 bearing Bates stamps MPD SJH756 consecutive to  
02:49:30 16 760, and this is an affidavit in support of a  
02:49:33 17 search warrant by you as the affiant, right?  
02:49:36 18 A Yes.  
02:49:36 19 Q Okay. On the second page of the search  
02:50:02 20 warrant, you were providing some of the  
02:50:05 21 information about how Jessica Payne was found,  
02:50:10 22 right?  
02:50:11 23 A Yes.  
02:50:12 24 Q And that included that her bra was torn in the  
02:50:17 25 mid front portion -- is that right -- at the

02:50:30 1 top, Jessica Payne's bra?

02:50:33 2 A Yes.

02:50:33 3 Q And that "he observed her pants were pulled

02:50:37 4 down to her ankles and the buttons unbuttoned,"

02:50:43 5 right?

02:50:43 6 A Yes.

02:50:43 7 Q And that she had bruising on her right hand,

02:50:43 8 right?

02:50:43 9 A Yes.

02:50:44 10 Q And a four-inch gash on her throat, right?

02:50:48 11 A Yes.

02:50:49 12 Q Okay. And you were seeking to seize any bloody

02:51:18 13 clothing in the home of Chaunte Ott and any

02:51:21 14 cutting -- and there may be a cutting device?

02:51:24 15 A Correct.

02:51:24 16 Q Okay. Was there another charging conference

02:51:33 17 after the polygraph and after the search of

02:51:39 18 Mr. Ott's home that you recall?

02:51:42 19 A Not that I recall, but they hadn't been

02:51:51 20 officially charged yet, so I would say there

02:51:55 21 probably was one.

02:51:56 22 Q Was that typically what was done, if charges

02:52:05 23 weren't approved, there'd be a second

02:52:07 24 conference?

02:52:07 25 A If there was follow-up to be conducted before a

02:52:10 1 final decision was made, yes.

02:52:12 2 Q Okay. And as you sit here today, do you have

02:52:18 3 an independent recollection of that?

02:52:19 4 A Of a second conference?

02:52:21 5 Q Yes.

02:52:21 6 A I do not.

02:52:22 7 Q Okay. I'm looking back at Exhibit 16.

02:52:45 8 A Yep. Yes.

02:52:46 9 Q There's no indication -- on Exhibit 16, it

02:52:52 10 indicates that "On Monday, November 6th, 1995,

02:52:56 11 after completing his review of the above

02:52:59 12 incident, ADA Williams proceeded to issue one

02:53:03 13 charge of first-degree intentional homicide,

02:53:06 14 party to a crime, and one count of attempted

02:53:06 15 robbery, party to a crime, against defendant,

02:53:08 16 Chaunte Ott," right?

02:53:09 17 A Yes.

02:53:10 18 Q And "one count of attempted robbery, party to a

02:53:13 19 crime, against defendant, Sam Hadaway," right?

02:53:15 20 A Correct.

02:53:16 21 Q And then it says "No charges were brought

02:53:18 22 against the subject, Richard Gwin"?

02:53:22 23 A Correct.

02:53:22 24 Q And there's no indication in this supplementary

02:53:24 25 report that you prepared of an additional

02:53:27 1 conference sometime after October 30th, right?

02:53:30 2 A Correct.

02:53:30 3 Q Okay. You were present for Mr. Ott's criminal

02:53:47 4 trial?

02:53:47 5 A Yes.

02:53:47 6 Q Okay. But you didn't testify?

02:53:50 7 A I did not.

02:53:51 8 Q Were you prepared to possibly testify?

02:53:55 9 A Yes.

02:53:56 10 Q Okay. And why -- what were you -- did Mark

02:54:00 11 Williams prepare you?

02:54:02 12 A Yes.

02:54:02 13 Q And in what -- what -- what was your testimony

02:54:08 14 going to be prepared to provide?

02:54:11 15 A If Hadaway or -- if Hadaway would have given

02:54:17 16 testimony contrary to his statement that he had

02:54:21 17 provided to me.

02:54:21 18 Q And was -- Gwin was not present to testify,

02:54:26 19 right?

02:54:28 20 A I believe Gwin did testify.

02:54:29 21 Q Oh, Gwin did testify, right. I'm sorry. So

02:54:32 22 was the same true for Gwin?

02:54:34 23 A Yes.

02:54:34 24 Q And at trial, Mr. Ott's trial, the entire

02:54:49 25 evidence against him was still just Gwin's

02:54:51 1 statement and Hadaway's statement, correct?

02:54:53 2 A Yes.

02:54:54 3 Q There was no physical evidence corroborating

02:54:58 4 anything that implicated Mr. Ott in that

02:55:00 5 homicide?

02:55:01 6 A Correct.

02:55:01 7 Q And there was no other evidence from other

02:55:03 8 witnesses that was developed before trial,

02:55:06 9 correct?

02:55:06 10 A Correct.

02:55:07 11 Q Okay. The same is true for Sam Hadaway, there

02:55:17 12 was nothing other than the statements that he

02:55:20 13 made and Mr. Gwin made, right?

02:55:24 14 A Correct.

02:55:25 15 Q There was no physical evidence corroborating

02:55:27 16 those statements?

02:55:28 17 A Correct.

02:55:28 18 Q And there was no eyewitnesses that ever

02:55:31 19 implicated Mr. Hadaway?

02:55:32 20 A Correct.

02:55:33 21 Q You -- I'm going to go back and ask you some

02:55:57 22 questions about the interrogation of

02:56:01 23 Mr. Hadaway back on October 27th, okay?

02:56:04 24 A Okay.

02:56:04 25 Q You previously testified that you spent

02:56:10 1 somewhere between 45 minutes to an hour  
02:56:13 2 building a rapport when talking to Mr. Hadaway,  
02:56:19 3 okay?  
02:56:19 4 A Okay.  
02:56:19 5 Q Do you want to see your testimony in that  
02:56:22 6 regard?  
02:56:23 7 A Is that from --  
02:56:23 8 Q It's from the Ott dep on Page 102 and 103 if  
02:56:28 9 you'd like to refer to that.  
02:56:52 10 A Okay.  
02:56:54 11 Q Does that refresh your recollection that the  
02:56:56 12 first 45 minutes to an hour was spent talking  
02:56:59 13 to Mr. Hadaway and you weren't documenting it  
02:57:01 14 in any way?  
02:57:02 15 A Correct.  
02:57:04 16 Q Okay. You can put that down. Sorry. You also  
02:57:22 17 previously testified that Mr. Hadaway was  
02:57:26 18 emotional when you were interrogating him. Do  
02:57:30 19 you remember that testimony?  
02:57:30 20 A Yes.  
02:57:31 21 Q Do you have an independent recollection of  
02:57:34 22 Mr. Hadaway being emotional?  
02:57:36 23 A Yes.  
02:57:36 24 Q Can you describe what you mean by that? What  
02:57:40 25 did you observe?

02:57:41 1 A He was crying at one point.

02:57:45 2 Q Like, actual tears?

02:57:48 3 A I don't know if they were actual tears, but he

02:57:52 4 was emotional and crying.

02:57:55 5 Q Anything else you observed?

02:57:57 6 A Not that I recall.

02:57:58 7 Q If you would turn your attention to Page 105 of

02:58:05 8 your deposition from June 30th, 2010, in

02:58:08 9 Exhibit 1, and do you see on Page 105 at Line

02:58:25 10 10 you testified he did show tears?

02:58:29 11 A Okay.

02:58:30 12 Q Does that refresh your recollection that you

02:58:32 13 observed Mr. Hadaway with actual tears?

02:58:36 14 A Yes.

02:58:37 15 Q Okay. And then at Line 12 you testified "That

02:58:46 16 was it. He was pretty much -- that was pretty

02:58:48 17 much it. He was pretty talkative. It wasn't

02:58:52 18 like, you know, I had to pull these answers

02:58:53 19 from him. As we talked, it flowed from him.

02:58:57 20 It was not a hard interview." Do you see that

02:58:58 21 testimony at Lines -- Page 105, Lines -- 105,

02:59:00 22 Lines 12 to 15?

02:59:01 23 A Yes.

02:59:01 24 Q Does that -- do you remember that?

02:59:03 25 A Yes.

02:59:03 1 Q Okay. Can you tell me about that? What does  
02:59:07 2 it -- Mr. Hadaway wasn't a hard witness? What  
02:59:10 3 do you mean?

02:59:11 4 A Because it was his doing that we were talking  
02:59:14 5 to him in the first place. He initiated the  
02:59:17 6 contact with us. He wanted to talk about the  
02:59:22 7 event and decided that he wanted to tell the  
02:59:27 8 truth, and it was a nonconfrontational type of  
02:59:34 9 interview. He told us about what happened. We  
02:59:40 10 asked questions in between, and it was very --  
02:59:47 11 I don't want to say an easy interview, but it  
02:59:52 12 was not a difficult interview.

02:59:54 13 Q Did you make -- well, strike that.  
03:00:14 14 Do you remember any of that  
03:00:15 15 back-and-forth with Mr. Hadaway, things you  
03:00:18 16 were asking him or details you were asking him  
03:00:21 17 to provide?

03:00:21 18 A Specific details, no.

03:00:23 19 Q But you -- it was a back-and-forth, right?

03:00:27 20 A Yes.

03:00:28 21 Q Was there any information you were hoping you  
03:00:32 22 could elicit from Mr. Hadaway?

03:00:33 23 A Just the truth.

03:00:34 24 Q Did you try to seek to obtain -- was there  
03:00:39 25 certain -- well, strike that.

03:00:44 1 Did you have any concerns that  
03:00:48 2 Mr. Hadaway was of limited intelligence?  
03:01:01 3 A No.  
03:01:02 4 Q Did Mr. Hadaway convey to you that he was in  
03:01:08 5 learning -- special education classes during --  
03:01:11 6 A No, not to my knowledge.  
03:01:13 7 Q You had also testified that you thought  
03:01:23 8 Mr. Hadaway was remorseful, right?  
03:01:26 9 A I don't recall.  
03:01:30 10 Q Okay. Do you have any memory as you sit here  
03:01:35 11 today of Mr. Hadaway being remorseful?  
03:01:38 12 A Based on his writings at the end of the  
03:01:43 13 statement, I would say he was remorseful.  
03:01:45 14 Q Do you have any information other than what's  
03:01:49 15 documented at the end of Mr. Hadaway's  
03:01:52 16 handwritten statement other than that?  
03:01:57 17 A No.  
03:01:58 18 Q So you have no independent recollection of any  
03:02:02 19 observations you made of Mr. Hadaway that you  
03:02:07 20 would describe as being remorseful?  
03:02:09 21 A That would go hand in hand with him being  
03:02:13 22 emotional.  
03:02:15 23 Q Okay. Other than your observation -- and when  
03:02:24 24 you're saying "emotional," you're referring to  
03:02:27 25 Mr. Hadaway as being tearful?

03:02:30 1 A Yes.

03:02:30 2 Q Anything else that you observed other than

03:02:32 3 Mr. Hadaway being tearful that you would

03:02:34 4 describe as being emotional?

03:02:35 5 A Not that I recall.

03:02:36 6 Q Okay. Is it true that one of the things you

03:02:48 7 did during your interrogation of Mr. Hadaway is

03:02:51 8 to provide him a copy of Mr. Gwin's statement

03:02:57 9 that he had given to you and Detective

03:03:00 10 DeValkenaere on the 25th?

03:03:01 11 A No, I don't recall that.

03:03:03 12 Q You don't recall that, but -- as you sit here

03:03:07 13 today, but is it -- are you denying that you

03:03:10 14 did it, or you just don't remember --

03:03:10 15 A I don't remember --

03:03:12 16 Q -- one way or the other?

03:03:13 17 A I don't remember doing that.

03:03:15 18 Q Okay. Is that something that you would do from

03:03:17 19 time to time if you were interrogating a

03:03:20 20 suspect, provide them a copy of a witness

03:03:21 21 statement against them?

03:03:23 22 A No.

03:03:23 23 Q You never did that?

03:03:27 24 A I would never give a -- a person a copy of

03:03:30 25 another defendant's or suspect's report.

03:03:33 1 Q Well, how about just a witness? At this point  
03:03:35 2 you didn't think Gwin was -- had implicated  
03:03:40 3 himself in any criminal conduct. Would you  
03:03:43 4 have told Mr. Hadaway "We have this evidence  
03:03:47 5 against you from Richard Gwin"?  
03:03:49 6 A I could have told him that.  
03:03:50 7 Q But you don't think you would have provided the  
03:03:53 8 actual statement?  
03:03:53 9 A I would never have provided him with the  
03:03:58 10 statement.  
03:03:58 11 Q Okay. So you deny doing that?  
03:03:59 12 A Where he would have physical possession of the  
03:04:01 13 statement? No.  
03:04:02 14 Q Would you have it in your physical possession  
03:04:04 15 and be reading from it to Mr. Hadaway? Could  
03:04:08 16 that happen?  
03:04:08 17 A That could happen.  
03:04:09 18 Q Okay. That's something you've done before?  
03:04:11 19 A Yes.  
03:04:11 20 Q Okay. And you'd do that to sort of demonstrate  
03:04:15 21 to the suspect that you have actual evidence  
03:04:17 22 against them from another witness?  
03:04:19 23 A It's a good -- in good faith.  
03:04:21 24 Q What do you mean "in good faith"?  
03:04:23 25 A That what I was telling them was the truth and

03:04:28 1 so that he can tell that I'm not lying to him  
03:04:32 2 about it, these things. In good faith, I would  
03:04:36 3 show him where his name was mentioned in the  
03:04:39 4 other statement, but I would not read that  
03:04:42 5 statement verbatim to him.

03:04:44 6 Q So you might show him the physical copy and  
03:04:47 7 point to his name?

03:04:48 8 A Correct.

03:04:48 9 Q And that would be a technique you could use in  
03:04:51 10 interrogation to demonstrate, "Hey, we have  
03:04:55 11 evidence against you"?

03:04:56 12 A Correct.

03:04:56 13 Q Okay. Do you remember doing that in the  
03:05:00 14 context of Mr. Hadaway's interrogation?

03:05:04 15 A Not specifically, no.

03:05:06 16 Q But it's a technique that you have used from  
03:05:10 17 time to time in interrogations of homicide  
03:05:11 18 suspects?

03:05:12 19 A I have used it in the past.

03:05:14 20 Q Okay. Did you -- in your interrogation of  
03:05:26 21 Mr. Hadaway, did you tell Mr. Hadaway that  
03:05:29 22 Jessica Payne's body was found under a  
03:05:32 23 mattress?

03:05:32 24 A No.

03:05:32 25 Q Did Jim DeValkenaere tell Sam Hadaway that

03:05:36 1 Jessica Payne's body was found under a  
03:05:38 2 mattress?  
03:05:38 3 A No.  
03:05:38 4 Q Did you tell Mr. Hadaway that her --  
03:05:42 5 Ms. Payne's neck had been cut?  
03:05:43 6 A No.  
03:05:44 7 Q Did Jim DeValkenaere do that?  
03:05:46 8 A No.  
03:05:46 9 Q Did you tell Sam Hadaway that Ms. Hadaway --  
03:05:49 10 Ms. Payne -- I'm sorry, strike that.  
03:05:51 11 Did you tell Sam Hadaway that  
03:05:55 12 Ms. Payne was found with her shirt pulled up?  
03:05:57 13 A No.  
03:05:57 14 Q Did you tell Sam Hadaway that Ms. Payne was  
03:06:01 15 found with her pants pulled down?  
03:06:03 16 A No.  
03:06:03 17 Q Did Jim DeValkenaere tell Sam Hadaway that  
03:06:07 18 Ms. Payne was found with her shirt pulled up?  
03:06:09 19 A Not that I recall, no.  
03:06:10 20 Q And did Jim DeValkenaere tell Sam Hadaway that  
03:06:15 21 Ms. Payne was found with her pants down?  
03:06:16 22 A No.  
03:07:46 23 Q Okay. I'm going to switch gears and move  
03:07:51 24 forward in time, okay? Do you remember being  
03:07:56 25 partners with Michael Wesolowski between 2000

03:08:02 1 and 2004?

03:08:04 2 A Yes.

03:08:04 3 Q And, again, I'm sorry about his passing. Were

03:08:17 4 you guys in the homicide unit when you were

03:08:19 5 partners?

03:08:20 6 A Yes.

03:08:21 7 Q Okay. So sometime after Mr. Ott's criminal

03:08:30 8 trial in 1996 you moved to -- I'm sorry, was it

03:08:35 9 crimes against persons or robberies?

03:08:38 10 A Robberies.

03:08:38 11 Q So you went to bank robberies?

03:08:41 12 A Yes.

03:08:41 13 Q And then by 2000 you came back to homicide?

03:08:45 14 A Yes.

03:08:45 15 Q Okay. And at that point you and Detective

03:08:51 16 Wesolowski were partners?

03:08:52 17 A Yes.

03:08:53 18 Q Had you requested to be partners together?

03:08:55 19 A It was his request.

03:09:00 20 Q Okay. Were you guys -- had you been -- worked

03:09:03 21 together prior to that time?

03:09:04 22 A Yes.

03:09:05 23 Q When had you guys worked together, in bank

03:09:09 24 robberies?

03:09:09 25 A No, we were police officers together.

03:09:11 1 Q Okay. Did you guys go to the academy together?

03:09:14 2 A No.

03:09:14 3 Q And you're saying it was his request, not your

03:09:20 4 request to be together?

03:09:22 5 A He was already in the unit and he requested

03:09:24 6 that I come back.

03:09:26 7 Q Did he ask you about it before he made that

03:09:29 8 request?

03:09:30 9 A Yes.

03:09:30 10 Q But you didn't put in a similar request?

03:09:34 11 A No.

03:09:34 12 Q Okay. Why not?

03:09:35 13 A I don't know.

03:09:40 14 Q Okay. But you weren't, like, objecting to

03:09:53 15 being transferred back to homicide, right?

03:09:55 16 A No.

03:09:55 17 Q Why did you leave homicide -- or did you leave

03:10:11 18 homicide after you guys stopped being partners,

03:10:13 19 or you continued in homicide and just had

03:10:16 20 another partner?

03:10:17 21 A After --

03:10:18 22 Q Wesolowski.

03:10:20 23 A After he retired, then I got a new partner.

03:10:22 24 Q I see. Okay. Okay. So during the time that

03:10:32 25 you were partners with Detective Wesolowski and

03:10:37 1 back in the homicide unit, do you remember  
03:10:40 2 there was DNA testing that linked DNA from  
03:10:46 3 Ms. Payne to the Joyce Mims homicide? Do you  
03:10:51 4 remember that?  
03:10:51 5 A I recall something like that.  
03:10:53 6 Q Okay. What do you recall about that?  
03:10:54 7 A Just what you said, that there was DNA found on  
03:10:59 8 Mims that linked to Jessica Payne.  
03:11:02 9 Q When do you recall first learning that  
03:11:05 10 information?  
03:11:06 11 A I don't recall.  
03:11:07 12 Q What do you recall doing, if anything, after  
03:11:15 13 you learned that DNA from Jessica Payne was  
03:11:24 14 linked to DNA obtained from Joyce Mims?  
03:11:31 15 A I don't know what I did.  
03:11:32 16 Q Is it possible you did nothing?  
03:11:35 17 A Yes.  
03:11:36 18 Q Do you remember who gave that information to  
03:11:44 19 you?  
03:11:44 20 A I don't think that information was given  
03:11:46 21 directly to me.  
03:11:48 22 Q Who did you get that information from, if you  
03:11:52 23 recall?  
03:11:52 24 A I don't know. I don't recall.  
03:11:56 25 Q Did you work on the Joyce Mims homicide also?

03:12:05 1 A No, I don't -- I don't think I did.

03:12:07 2 Q Okay. Do you remember how many homicides you

03:12:30 3 worked of women who had been killed in the

03:12:37 4 North Milwaukee area that had been strangled or

03:12:39 5 cut in their throat?

03:12:44 6 A No.

03:12:44 7 Q But it's fair to say there was more than just

03:12:47 8 Ms. Payne, correct?

03:12:50 9 A That I was involved in?

03:12:51 10 Q Yep.

03:12:52 11 A I -- I don't recall.

03:12:53 12 Q Okay. Do you remember working on the Sheila

03:13:02 13 Farrior homicide?

03:13:03 14 A No.

03:13:03 15 Q How about Ophelia Preston?

03:13:11 16 A Yes.

03:13:12 17 Q McCormick? I'm trying to think of McCormick's

03:13:21 18 first name. Do you remember working on the

03:13:28 19 McCormick homicide?

03:13:29 20 A No.

03:13:30 21 Q How about Carron Kilpatrick?

03:13:34 22 A No.

03:13:35 23 Q Okay. Can you --

03:13:45 24 MS. GEHLING: Florence McCormick.

03:13:45 25 MS. DONNELL: Florence McCormick?

03:13:48 1 Thanks so much.

03:13:48 2 BY MS. DONNELL:

03:13:55 3 Q Florence McCormick?

03:13:58 4 A No.

03:13:58 5 Q This will be 21. This is 22.

03:14:24 6 (Exhibit Nos. 21 and 22 were marked.)

03:14:29 7 BY MS. DONNELL:

03:14:30 8 Q Okay. I'm first handing you what it's

03:14:32 9 designated -- I've designated as Exhibit 21 to

03:14:34 10 your deposition. Do you recognize Exhibit 21

03:14:36 11 as a Wisconsin Department of Justice crime

03:14:40 12 laboratory report?

03:14:41 13 A Yes.

03:14:42 14 Q And you've seen this report before, right?

03:14:44 15 A Yes.

03:14:45 16 Q And this is a report that's dated May 22nd,

03:14:49 17 2003?

03:14:49 18 A Yes.

03:14:50 19 Q And do you see at the bottom that it's received

03:14:54 20 June 18th, 2003?

03:14:57 21 A Yes.

03:14:57 22 Q I'm going to represent to you in the Ott

03:15:00 23 litigation, the City of Milwaukee provided

03:15:02 24 discovery responses that admitted it received

03:15:05 25 this report on June 18th, 2003, okay?

03:15:09 1 A Okay .

03:15:09 2 Q Is any of this handwriting yours on Exhibit 21?

03:15:15 3 A No .

03:15:15 4 Q You see here, though, that your name is at the

03:15:20 5 bottom right-hand corner?

03:15:22 6 A Yes .

03:15:22 7 Q Do you know whose handwriting that's in?

03:15:26 8 A I have no idea .

03:15:26 9 Q Would you recognize Michael Wesolowski's

03:15:30 10 handwriting?

03:15:30 11 A I don't know .

03:15:31 12 Q What was the process -- do you know, did that

03:15:40 13 name indicate that that means this report was

03:15:43 14 to go to you?

03:15:44 15 A I have no idea .

03:15:47 16 Q Okay . Is it accurate to say that when crime

03:15:52 17 lab reports from the state crime lab would come

03:15:55 18 in on a homicide they would be sent to the

03:15:57 19 attention of one of the lead detectives?

03:16:00 20 MS. GEHLING: Objection; foundation.

03:16:03 21 THE WITNESS: Not from the crime lab .

03:16:05 22 BY MS. DONNELL:

03:16:05 23 Q Somebody in the police department would route

03:16:07 24 it to the detective, one of the detectives on

03:16:11 25 the case?

03:16:13 1 A Yes.

03:16:14 2 Q Okay. If you look at Exhibit -- here, I'm

03:16:17 3 going to hand you what's Exhibit 22 to your

03:16:19 4 deposition which is Bates MPD SJH863, okay, and

03:16:26 5 864. Do you see this is a Wisconsin crime lab

03:16:30 6 report dated June 5th, 2003. Do you see that?

03:16:35 7 A Yes.

03:16:35 8 Q And this report is also for the Jessica Payne

03:16:37 9 homicide?

03:16:38 10 A Yes.

03:16:38 11 Q And I think I forgot to ask you -- tell you,

03:16:41 12 like, the -- there's an M file number, murder

03:16:43 13 file number, at the top of both Exhibit 21 and

03:16:46 14 22 of 3084, right?

03:16:48 15 A Yes.

03:16:48 16 Q And that's the Payne homicide number for the

03:16:51 17 Milwaukee Police Department?

03:16:51 18 A Correct.

03:16:52 19 Q Okay. And do you see on Exhibit 22 there's a

03:17:01 20 stamp that says "October 6th, 2003"? Do you

03:17:05 21 see that?

03:17:05 22 A Yes.

03:17:05 23 Q And do you see here it's also written on here

03:17:08 24 at the top "Buschmann" at the -- at the -- just

03:17:12 25 over the stamp on Exhibit 22? So on --

03:17:17 1 A Yes.

03:17:17 2 Q -- Page 2 of Exhibit -- the June 5th, 2003,  
03:17:21 3 report, on the second page --

03:17:21 4 A Yes.

03:17:21 5 Q -- do you see that your name is written,  
03:17:23 6 "Buschmann"?

03:17:23 7 A I do.

03:17:24 8 Q And then in the stamp under -- after the  
03:17:26 9 office, it says "Det. Carl Buschmann"?

03:17:30 10 A Yep.

03:17:30 11 Q Is that your signature?

03:17:31 12 A Yes, it is.

03:17:32 13 Q Okay. So was it your practice to sign crime  
03:17:38 14 lab reports when you received them?

03:17:40 15 A Yes.

03:17:40 16 Q And so Exhibit 22 indicates to you that you did  
03:17:44 17 receive Exhibit 22, the June 5th, 2003, report,  
03:17:49 18 right?

03:17:49 19 A Yes.

03:17:50 20 Q Okay. And -- okay. So looking back at  
03:18:12 21 Exhibit 21 from the crime lab, this is the May  
03:18:15 22 22nd, 2003, report.

03:18:18 23 A Hm-hm.

03:18:19 24 Q This report indicates that a short tandem  
03:18:30 25 repeat (STR) DNA profile consistent of having

03:18:33 1 originated from a mixture of DNA from Jessica  
03:18:36 2 Payne and an unknown male individual was  
03:18:36 3 developed from the vaginal swab remainder that  
03:18:39 4 was Item B1a, right?  
03:18:42 5 A Yes.  
03:18:42 6 Q And that profile -- on September 24th, an  
03:18:51 7 initial search of the unknown male STR profile  
03:18:54 8 against the Wisconsin DNA Databank didn't  
03:18:56 9 reveal any matches, right?  
03:18:58 10 A Right.  
03:18:59 11 Q And then on May 19th, 2003, a second search of  
03:19:03 12 the evidentiary profile was run against the  
03:19:05 13 Wisconsin DNA Databank and resulted in a match  
03:19:08 14 between the STR profile developed from  
03:19:11 15 Ms. Payne's vaginal swab remainder and an  
03:19:13 16 evidentiary profile from the June 20th, 1997,  
03:19:17 17 homicide, also from the City of Milwaukee, and  
03:19:18 18 the victim was Joyce Mims, right?  
03:19:21 19 A Yes.  
03:19:21 20 Q And so the STR profile of the unknown male  
03:19:26 21 evidentiary sample from the vaginal swab of  
03:19:28 22 Ms. Mims was linked by -- with -- by the DNA  
03:19:34 23 Databank to the unknown male evidentiary  
03:19:36 24 profile obtained from the vaginal swab of  
03:19:39 25 Ms. Payne, right?

03:19:40 1 A Yes.

03:19:40 2 Q That these evidentiary -- then it indicates

03:19:58 3 that these evidentiary profiles from Ms. Payne

03:20:00 4 and Ms. Mims are going to continue to be

03:20:03 5 routinely searched against the national and

03:20:05 6 state -- at the national and state levels,

03:20:08 7 right?

03:20:09 8 A Yes.

03:20:09 9 Q And then the lab's indicating to the -- to you

03:20:13 10 or to the Milwaukee Police Department that if

03:20:14 11 there's any additional matches, the department

03:20:17 12 will be notified, right?

03:20:18 13 A Yes.

03:20:18 14 Q And do you consider the information that's

03:20:29 15 documented in Exhibit 21 as important

03:20:34 16 investigatory information to be followed up on?

03:20:36 17 A Yes.

03:20:41 18 Q Why?

03:20:42 19 A Well, they want -- it would be important to

03:20:44 20 identify the supplier of the DNA that was found

03:20:48 21 on both Jessica Payne and the other, Mims.

03:20:55 22 Q And why, as a homicide detective, would you

03:21:01 23 want to follow up on that information?

03:21:08 24 A Because it could be important to the

03:21:10 25 investigation.

03:21:14 1 Q Is that because it may indicate a common  
03:21:18 2 perpetrator?  
03:21:20 3 A That's what it says.  
03:21:21 4 Q Because the unknown male evidentiary profile of  
03:21:26 5 two of these homicide victims were the --  
03:21:29 6 appearing to be the same person, right?  
03:21:32 7 A Yes.  
03:21:36 8 Q Okay. And in the Exhibit 22, the June 5th,  
03:21:42 9 2003, report, that evidentiary profile that was  
03:21:47 10 obtained from the vaginal swab of Ms. Payne  
03:21:51 11 that was B1 designated sub-designation B1a was  
03:21:56 12 run against the standard for the DNA profile of  
03:22:01 13 Walter Moffett, Chaunte Ott, Richard Gwin, and  
03:22:05 14 Sam Hadaway, right?  
03:22:06 15 A Yes.  
03:22:06 16 Q And all of those individuals were excluded as  
03:22:10 17 being the contributor to the unknown male  
03:22:14 18 profile of B1a, correct?  
03:22:16 19 A Correct.  
03:22:17 20 Q Okay. Do you consider that important -- well,  
03:22:27 21 strike that.  
03:22:27 22 Do you consider that -- these two  
03:22:30 23 pieces of information, Exhibit 1 and Exhibit --  
03:22:31 24 I mean Exhibit 21 and Exhibit 22 as also  
03:22:36 25 important investigatory information to be

03:22:38 1 followed up on?

03:22:39 2 A I don't see where it would be followed up on.

03:22:44 3 It was just an elimination of known people that

03:22:47 4 had contact with Jessica Payne. I don't know

03:22:52 5 where the follow-up would go from there because

03:22:54 6 the -- the DNA sample had not been identified.

03:22:59 7 Q Sure. But as a homicide detective, if you are

03:23:03 8 receiving information that there's a possible

03:23:06 9 link through DNA evidence of two homicide

03:23:10 10 victims, Ms. Payne and Ms. Mims, who were

03:23:13 11 killed approximately, you know, two years apart

03:23:19 12 and that individuals that had been suspects in

03:23:24 13 one of those, in the Payne homicide, were

03:23:28 14 excluded as the contributors, does that suggest

03:23:31 15 to you that somebody else did that crime?

03:23:35 16 A No.

03:23:35 17 Q Why not?

03:23:36 18 A Because the fact that Chaunte Ott allegedly

03:23:43 19 killed her doesn't mean that he had sex with

03:23:46 20 her, and she was having sex with other people.

03:23:52 21 We know that she was having sex with other

03:23:57 22 people which could attribute itself to the DNA

03:24:02 23 that was left. Her lifestyle, staying at where

03:24:09 24 she was staying, she was prostituting herself,

03:24:14 25 and she could have had sex with numerous men

03:24:18 1 that could have been the contributors to that

03:24:20 2 DNA.

03:24:21 3 Q So you would want to follow up on that

03:24:23 4 information, but it wouldn't necessarily be

03:24:25 5 preclusive, in your mind?

03:24:26 6 A Well, we did follow up, and that's why all

03:24:28 7 these people were tested.

03:24:29 8 Q Okay. Did you request that all of these people

03:24:37 9 be tested that were tested and reported in the

03:24:40 10 June 5th, 2003, report?

03:24:47 11 A Yes, I believe it was me.

03:24:49 12 Q Okay. And that's because you -- you signed

03:24:52 13 your name here?

03:24:52 14 A Yes.

03:24:53 15 Q Okay. Do you remember having any conversations

03:24:56 16 with the lab about that?

03:24:59 17 A No, I don't.

03:25:01 18 Q How about with your supervisors?

03:25:04 19 A I don't recall.

03:25:05 20 Q How about with your partner, Michael

03:25:10 21 Wesolowski?

03:25:10 22 A I -- again, I don't recall.

03:25:12 23 Q Okay. But as you sit here today, you think you

03:25:18 24 probably requested the follow-up investigation

03:25:22 25 to see if the unknown male profile could be run

03:25:28 1 against the standards that were collected from  
03:25:31 2 various individuals, including Ott, Gwin, and  
03:25:35 3 Hadaway?

03:25:36 4 A I would say yes, the fact that my signature is  
03:25:39 5 on this report.

03:25:40 6 Q Okay. Do you remember what, if anything, you  
03:25:57 7 did with the information you obtained from the  
03:26:00 8 June 5th, 2003, report once you obtained it?

03:26:07 9 A I -- I don't think I ever saw that report.

03:26:12 10 Q I'm sorry, Exhibit 22, the one that has your  
03:26:15 11 name on it.

03:26:16 12 A Oh, okay.

03:26:17 13 Q Do you remember what you -- what, if anything,  
03:26:19 14 you did with the information once you got this  
03:26:21 15 report from the lab?

03:26:23 16 A The lab report should have been forwarded to  
03:26:26 17 the district attorney's office.

03:26:28 18 Q Do you have any independent recollection of  
03:26:33 19 providing the June 5th, 2003, report to the  
03:26:37 20 district attorney's office?

03:26:37 21 A I do not.

03:26:39 22 Q Okay. Looking at both Exhibit 21 and Exhibit  
03:26:44 23 22, is it fair to assume that you actually had  
03:26:48 24 the information in the May 22nd, 2003, report  
03:26:53 25 and that's what resulted in the follow-up

03:26:55 1 investigation reported in the June 5th report?

03:27:06 2 A I don't -- like, I don't recall seeing this

03:27:10 3 report.

03:27:11 4 Q Exhibit 21, just for the record? You don't

03:27:14 5 recall ever seeing Exhibit 21?

03:27:15 6 A Okay. Right, I don't recall seeing this

03:27:18 7 report. Whether it triggered this, it's a good

03:27:21 8 possibility, but, again, I don't recall the

03:27:27 9 circumstances around it.

03:27:28 10 Q It's -- right. That makes sense. So is it

03:27:35 11 accurate -- I think your testimony is seeing

03:27:38 12 Exhibit 21 and Exhibit 22 doesn't refresh your

03:27:40 13 recollection as you sit here today about

03:27:44 14 receiving the information contained in the May

03:27:46 15 22nd, 2003, report from the crime lab that

03:27:50 16 linked the evidentiary profile obtained from

03:27:53 17 the vaginal swab of Ms. Payne to the

03:27:55 18 evidentiary male profile obtained from the

03:27:58 19 vaginal swab of Ms. Mims, right?

03:28:00 20 A Correct.

03:28:00 21 Q However, as you sit here today, reviewing

03:28:03 22 Exhibit 22 and the additional testing of

03:28:08 23 running various standards obtained from

03:28:11 24 suspects in the Payne homicide against the

03:28:14 25 vaginal swab obtained from Ms. Payne to see if

03:28:18 1 there was any connection, they seem like they  
03:28:22 2 could be connected? In other words, Exhibit 22  
03:28:25 3 could have been a follow-up investigation  
03:28:28 4 requested after the information about Payne  
03:28:31 5 being linked to the Mims homicide?

03:28:35 6 A Could have been.

03:28:36 7 Q That's a reasonable assumption?

03:28:40 8 A Yes.

03:28:41 9 Q Okay. And you don't recall specifically  
03:28:48 10 providing the June 5th, 2003, report or  
03:28:52 11 information contained in it to Mark Williams;  
03:28:55 12 is that right?

03:28:55 13 A Correct.

03:28:56 14 Q Okay. Was there a policy and procedure that  
03:29:06 15 provided these reports to the district  
03:29:09 16 attorney's office directly, or did the  
03:29:12 17 requesting agency have to provide that  
03:29:15 18 information to the DA's office?

03:29:17 19 MS. GEHLING: Objection; foundation.

03:29:18 20 MS. DONNELL: If you know.

03:29:19 21 THE WITNESS: I'm not sure.

03:29:19 22 BY MS. DONNELL:

03:29:20 23 Q Okay. Do you recall, as you sit here today,  
03:29:59 24 receiving any additional DNA reports that  
03:30:03 25 linked evidentiary DNA profiles of unknown

03:30:08 1 males to the Mims, Payne, and additional  
03:30:14 2 homicides?

03:30:15 3 A No.

03:30:43 4 Q Do you recall, as you sit here today, any  
03:30:49 5 follow-up investigation you requested after  
03:30:51 6 receiving the June 5th, 2003, DNA report from  
03:30:57 7 the Wisconsin crime lab?

03:31:00 8 A No.

03:31:29 9 Q Did you ever -- do you know Gilbert Hernandez?

03:31:35 10 A Yes.

03:31:35 11 Q Did you and Gilbert Hernandez work together in  
03:31:39 12 the homicide unit at any point in your career?

03:31:41 13 A No.

03:31:42 14 Q How do you know Gilbert Hernandez?

03:31:46 15 A He's a fellow detective.

03:31:47 16 Q But in a different unit?

03:31:49 17 A He worked homicide on a different shift.

03:31:52 18 Q Okay. So you were both in homicide, just  
03:31:55 19 different shifts?

03:31:55 20 A Correct.

03:31:56 21 Q And how about Katherine Hein?

03:32:02 22 A Yes, I know her.

03:32:03 23 Q Are you social friends with either one of them?

03:32:06 24 A No.

03:32:06 25 Q Did you have any conversations with Gilbert

03:32:13 1 Hein [sic] or Katherine Hein about their  
03:32:16 2 investigation of Walter Ellis?

03:32:18 3 A No.

03:32:18 4 Q Did you have any conversations with any  
03:32:20 5 Milwaukee Police Department detectives  
03:32:23 6 investigating Walter Ellis ever?

03:32:28 7 A Ever?

03:32:29 8 Q Yeah.

03:32:29 9 A Not that I recall.

03:32:30 10 Q Did you only read about Walter Ellis in the  
03:32:35 11 newspaper? Well, strike that.  
03:32:39 12 Other than conversations with your  
03:32:40 13 attorneys, did you obtain information related  
03:32:43 14 to Walter Ellis from any other sources other  
03:32:49 15 than the newspaper?

03:32:50 16 A I don't recall hearing the name Walter Ellis  
03:32:53 17 until he was arrested.

03:32:56 18 Q And after his arrest, did you have any  
03:32:58 19 conversations with any of your colleagues or  
03:33:00 20 former colleagues at the Milwaukee Police  
03:33:02 21 Department about Ellis?

03:33:03 22 A Not that I recall.

03:33:05 23 Q Did you take any interest in his arrest based  
03:33:22 24 on the fact that he was arrested and ultimately  
03:33:24 25 convicted of a number of -- nine homicides from

03:33:26 1 the period of time with which you were working  
03:33:28 2 homicide?

03:33:29 3 A I was retired for four years already from  
03:33:33 4 there.

03:33:33 5 Q Understood. When he was charged and convicted  
03:33:37 6 you were retired, but the cases for which he  
03:33:39 7 was charged and convicted, a number of them  
03:33:41 8 occurred when you were a detective with the  
03:33:43 9 Milwaukee Police Department.

03:33:45 10 A Okay. Yes.

03:33:46 11 Q So I'm just asking, did you take any interest  
03:33:48 12 in it given that they were homicides you'd been  
03:33:52 13 working up?

03:33:53 14 A The only one I was interested in was the  
03:33:56 15 Jessica Payne.

03:34:00 16 Q Why were you interested in that one?

03:34:02 17 A Because they had identified his DNA with her.  
03:34:09 18 I was -- took interest in that.

03:34:13 19 Q Did it concern you that Walter Ellis -- well,  
03:34:21 20 what -- what interested you about the fact that  
03:34:23 21 Walter Ellis's DNA was found in Jessica Payne?

03:34:27 22 A I just was interested in the circumstances and  
03:34:31 23 how his DNA was recovered from her.

03:34:36 24 Q Did you talk to anybody in the department about  
03:34:39 25 that?

03:34:40 1 A Not that I recall.

03:34:42 2 Q Okay. So you just read about that in the

03:34:45 3 newspaper?

03:34:46 4 A No. I remember talking to Mark Williams.

03:35:03 5 Q What did you and Mark Williams talk about?

03:35:06 6 A He just told me that they were charging this

03:35:11 7 guy with numerous homicides and that it was his

03:35:18 8 DNA that was identified with Jessica Payne.

03:35:22 9 Q Anything else you recall about that

03:35:25 10 conversation with Mark Williams?

03:35:27 11 A No.

03:35:28 12 Q Was that when you were working as an

03:35:31 13 investigator with the DA's office?

03:35:32 14 A Yes.

03:35:33 15 Q Was that in Mark's office?

03:35:35 16 A Yes.

03:35:36 17 Q Anybody else other than you and Mark present

03:35:39 18 for that conversation?

03:35:40 19 A Not that I recall.

03:35:41 20 Q Was that conversation prior to the actual

03:35:45 21 criminal complaint being issued for Walter

03:35:47 22 Ellis?

03:35:48 23 A I don't know.

03:35:48 24 Q Did you and Mark have any conversation about

03:35:53 25 whether he was going to charge Walter Ellis

03:35:55 1 with Jessica Payne's murder?

03:35:58 2 A In particular, no, I don't have recollection of

03:36:05 3 our conversation about that.

03:36:07 4 Q Did you have any conversation with Mark

03:36:14 5 Williams about whether he was considering to

03:36:17 6 charge Walter Ellis with the murder of Jessica

03:36:20 7 Payne based on the DNA evidence?

03:36:30 8 A I believe -- I can't say for certain what the

03:36:36 9 conversation was.

03:36:37 10 Q It sounds like you recall a vague conversation,

03:36:41 11 but you don't recall the specifics --

03:36:42 12 A But I don't want to say something where I'm

03:36:45 13 guessing. So I don't remember what the

03:36:49 14 conversation was.

03:36:49 15 Q Okay. And just so I have it clear, I don't

03:36:54 16 want you to speculate. I don't need you to

03:36:56 17 guess. So -- and I don't want you to do that

03:36:58 18 and neither does your attorney, so I'm not

03:37:00 19 asking you to do that, okay? Okay?

03:37:03 20 A Yes.

03:37:03 21 Q Why don't you just tell me everything that you

03:37:09 22 do have a memory of.

03:37:10 23 A I did already.

03:37:11 24 Q Okay. And so your memory is that you remember

03:37:24 25 having a conversation with Mark Williams about

03:37:28 1 Walter Ellis's DNA being found on a number of  
03:37:32 2 victims for which he was either going to be  
03:37:36 3 charged or was already charged, right?  
03:37:37 4 A Yeah, I don't know if he had been charged yet  
03:37:39 5 or was being looked at. I don't know. I don't  
03:37:43 6 remember.  
03:37:43 7 Q But it was -- this conversation was sometime  
03:37:45 8 after the point at which Walter Ellis's DNA had  
03:37:49 9 been obtained and then was linked to these  
03:37:52 10 various evidentiary profiles?  
03:37:54 11 A Yes.  
03:37:54 12 Q Okay. And so Walter Ellis was -- had either  
03:37:58 13 been charged or was going to be charged, one of  
03:38:02 14 those two, right?  
03:38:02 15 A One of the two.  
03:38:03 16 Q Yep. And Jessica Payne, her homicide was  
03:38:09 17 brought up in that conversation in the context  
03:38:11 18 of she was one of the people who Walter Ellis's  
03:38:16 19 DNA was found in or on?  
03:38:19 20 A Correct.  
03:38:19 21 Q Okay. And you don't recall one way or the  
03:38:23 22 other whether you and Mark Williams had any  
03:38:27 23 discussion about whether he was going to charge  
03:38:30 24 Walter Ellis with Payne's homicide; you just  
03:38:33 25 don't recall one way or the other?

03:38:35 1 A Correct.

03:38:35 2 Q Okay. And is that the extent of your memory as

03:38:42 3 you sit here today of that conversation with

03:38:44 4 Mark Williams --

03:38:45 5 A Yes.

03:38:45 6 Q -- in his office?

03:38:47 7 A Yes.

03:38:47 8 Q Okay. Prior to the conversation you've just

03:39:00 9 testified about with Mark Williams, do you, as

03:39:03 10 you sit here today, remember any other

03:39:06 11 conversations you had with Mark Williams after

03:39:10 12 Mr. Ott's criminal trial concluded and this

03:39:15 13 conversation, whenever it occurred, regarding

03:39:18 14 Walter Ellis and the Payne homicide? Do you

03:39:22 15 have any other memory of conversations you had

03:39:24 16 with Mark Williams about the Payne homicide

03:39:27 17 between those two time periods?

03:39:29 18 A No, I don't.

03:39:31 19 Q Okay. Thank you. Did you have any work -- do

03:40:08 20 you remember the Maryetta Griffin homicide?

03:40:11 21 Did you do any work on that homicide that you

03:40:13 22 remember?

03:40:13 23 A No, not that I remember.

03:40:14 24 Q Okay. Okay. Let's see. Do you need a break,

03:40:47 25 or do you want to keep going?

03:40:49 1 A I'm okay.

03:40:51 2 Q Okay.

03:40:51 3 MS. DONNELL: Are you okay?

03:40:52 4 MS. GEHLING: (Nods head.)

03:41:09 5 MS. DONNELL: Okay.

03:41:21 6 (Exhibit No. 23 was marked.)

03:41:22 7 BY MS. DONNELL:

03:41:25 8 Q Mr. Buschmann, I'm handing you what I've

03:41:27 9 designated as Exhibit 23 to your deposition,

03:41:31 10 and this is from the Florence McCormick

03:41:37 11 homicide, M No. 3044, and it's Bates stamped

03:41:43 12 HADAWAY38631 consecutive to 635, and it's part

03:41:50 13 of Section 13 of that M file, Pages 44 to 48,

03:41:56 14 okay?

03:41:56 15 A Okay.

03:41:57 16 Q This report was submitted by Detective Orley.

03:42:08 17 Do you know who Detective Orley was?

03:42:10 18 A Yes.

03:42:10 19 Q Okay. And did you work with Detective Orley?

03:42:13 20 A No.

03:42:14 21 Q You never worked with him?

03:42:17 22 A I did not.

03:42:18 23 Q Okay. Okay. Do you see at the bottom of this

03:42:33 24 report "This was passed to Detective Buschmann

03:42:37 25 and Detective Valuch on the early shift," and

03:42:42 1 detectives will take possible hair and blood  
03:42:45 2 samples from an individual, a Mr. Scott, a  
03:42:53 3 Mr. Sylvester Scott? Do you see that?  
03:42:54 4 A Yes.  
03:42:56 5 Q Do you remember -- does that refresh your  
03:42:59 6 recollection of any of your involvement on the  
03:43:02 7 Florence McCormick homicide?  
03:43:04 8 A No.  
03:43:04 9 Q Okay. Okay. I'm going to mark this as  
03:43:42 10 Exhibit 24.  
03:43:53 11 (Exhibit No. 24 was marked.)  
03:43:54 12 BY MS. DONNELL:  
03:43:54 13 Q I'm handing you what I've designated as  
03:43:58 14 Exhibit 24, Mr. Buschmann. Do you see Exhibit  
03:44:00 15 24 and recognize this as a supplementary report  
03:44:04 16 prepared by Detective Michael Valuch -- is it  
03:44:11 17 Valuch or Valuch?  
03:44:11 18 A Valuch.  
03:44:12 19 Q Valuch.  
03:44:12 20 -- documenting work you did with him  
03:44:15 21 in June of 1995 on the Sheila Farrior homicide  
03:44:19 22 investigation?  
03:44:43 23 A I don't remember this.  
03:44:44 24 Q You don't remember the work you did with  
03:44:49 25 Detective Valuch on June 28th, 1995, in the

03:44:55 1 Sheila Farrior homicide; is that right?

03:44:57 2 A That's correct.

03:44:58 3 Q But you don't disagree that you were doing work

03:45:01 4 on that homicide?

03:45:02 5 A Correct.

03:45:02 6 Q Okay. Did you ever work with confidential

03:45:08 7 informants when you were a homicide detective?

03:45:12 8 A No.

03:45:12 9 Q You never did?

03:45:13 10 A No.

03:45:13 11 Q Why not?

03:45:14 12 A It was not something I did.

03:45:17 13 Q Okay. Was there a reason why you didn't work

03:45:20 14 with confidential informants?

03:45:22 15 A I never had a reason to.

03:45:24 16 Q You certainly were permitted to, right?

03:45:27 17 A Yes. I've never worked with a confidential

03:45:38 18 informant.

03:45:39 19 Q Did any of your partners ever work with

03:45:48 20 confidential informants --

03:45:51 21 MS. GEHLING: Objection; foundation.

03:45:51 22 BY MS. DONNELL:

03:45:51 23 Q -- that you're aware of?

03:45:53 24 A I don't know.

03:45:53 25 Q But there's no particular reason why you

03:45:55 1 didn't?

03:45:56 2 A No.

03:46:19 3 Q Do you remember any of the circumstances of the

03:46:21 4 Sheila Farrior homicide?

03:46:23 5 A No.

03:46:24 6 Q How about the Debra Maniece homicide?

03:46:27 7 A No, not really. I know Maniece was one of the

03:46:38 8 homicide victims, and I think Detective

03:46:44 9 Wesolowski and I did some work on that, that

03:46:45 10 case.

03:46:46 11 Q Okay. What do you remember about your work on

03:46:51 12 the Maniece homicide, the Debra Maniece

03:46:54 13 homicide?

03:46:55 14 A I -- I don't know the person's name, but there

03:47:00 15 was DNA found that was identified, and this

03:47:04 16 person was in prison out of state, and we had

03:47:07 17 gone to that prison and talked to him.

03:47:09 18 Q Was that George Jones?

03:47:11 19 A I'm not sure.

03:47:12 20 Q And that was down in Mississippi?

03:47:17 21 A It could have been. I know it was down south.

03:47:22 22 Q Do you remember who you went with?

03:47:24 23 A It would have been with Detective Wesolowski.

03:47:27 24 Q Okay. How about the Mims homicide? Do you

03:47:40 25 remember working on the Joyce Mims homicide?

03:47:42 1 A I do not.

03:47:43 2 Q Okay. This will be Exhibit 25.

03:48:05 3 (Exhibit No. 25 was marked.)

03:48:05 4 BY MS. DONNELL:

03:48:05 5 Q I'm handing you what I've designated as

03:48:09 6 Exhibit 25. Do you recognize Exhibit 25 as a

03:48:18 7 report submitted by Detective Michael

03:48:22 8 Wesolowski?

03:48:22 9 A Yes.

03:48:23 10 Q And this report actually is documenting some

03:48:29 11 work that you did with him in April of 2003.

03:48:33 12 Do you see that down at the bottom?

03:48:35 13 A Yes.

03:48:35 14 Q But Joyce Mims was somebody who was murdered

03:48:38 15 back in June 1997. Do you see that?

03:48:41 16 A Yes.

03:48:42 17 Q Okay. And do you see here that -- so this

03:49:18 18 investigation that you were doing in April of

03:49:21 19 2003, basically there was items that were

03:49:32 20 resubmitted for testing in February of 2003,

03:49:35 21 right --

03:49:35 22 A Yes.

03:49:35 23 Q -- for Ms. Mims in the first paragraph?

03:49:40 24 A Yes.

03:49:41 25 Q Okay. And there was DNA -- on April 10th of

03:49:57 1 2003, there was a hit, a positive hit, in the  
03:50:00 2 DNA Databank regarding the semen that was found  
03:50:03 3 in the underpants located next to the body of  
03:50:06 4 Ms. Mims with a Mr. Fabian Reyes, right?  
03:50:10 5 A Yes.  
03:50:10 6 Q And so you and your partner, Mr. Wesolowski,  
03:50:15 7 went and talked to him, right?  
03:50:17 8 A Yes.  
03:50:21 9 Q Okay. And Mr. Reyes gave you guys a buccal  
03:50:37 10 swab; is that right?  
03:50:50 11 A Yes.  
03:50:50 12 Q And then there's some other follow-up interview  
03:50:53 13 and this was presented to Mark Williams and he  
03:50:55 14 decided not to charge Fabian Reyes, right?  
03:51:03 15 A Yes.  
03:51:04 16 Q Okay. And then not too long after this work  
03:51:10 17 that you did on the Joyce Mims investigation  
03:51:14 18 was when there was that DNA hit less than a  
03:51:18 19 month later, right, or around a month later on  
03:51:22 20 May 22nd where there was the hit between --  
03:51:27 21 that the lab identified between Payne --  
03:51:27 22 A Oh, okay.  
03:51:29 23 Q -- and Mims, right?  
03:51:30 24 A Okay. Yes.  
03:51:31 25 Q So you and Wesolowski were working on the Mims

03:51:35 1 case in April of 2003, a little more than a  
03:51:41 2 month before that hit came through, right?  
03:51:44 3 A Yes.  
03:51:44 4 Q Okay. Does that refresh your recollection in  
03:51:46 5 any way of the work you were doing back then?  
03:51:49 6 A No.  
03:51:49 7 Q Okay. As you sit here today, are you now aware  
03:51:57 8 that the -- Walter Ellis was charged with the  
03:52:01 9 Mims homicide?  
03:52:02 10 A I wasn't aware of that, no.  
03:52:05 11 Q Are you -- as you sit here today, are you also  
03:52:09 12 aware that he was charged with the Sheila  
03:52:12 13 Farrior homicide?  
03:52:13 14 A No.  
03:52:14 15 Q How about Debra Harris? Did I ask you about  
03:52:19 16 Debra Harris? Did you work on that homicide?  
03:52:21 17 A No. I don't know which homicides he was  
03:52:23 18 charged with.  
03:52:24 19 Q Okay. As you sit here today, you don't know  
03:52:26 20 any of them?  
03:52:26 21 A No.  
03:52:27 22 Q Okay.  
03:52:56 23 MS. DONNELL: Let's go off the  
03:52:57 24 record.  
03:52:58 25 THE VIDEOGRAPHER: Going off the

03:52:59 1 record at 3:52.

03:53:01 2 (Brief recess taken.)

04:00:33 3 THE VIDEOGRAPHER: We're back on the

04:00:34 4 record at 4:00.

04:00:37 5 BY MS. DONNELL:

04:00:39 6 Q Okay. Detective Buschmann, thank you for your

04:00:41 7 time. I do have some follow-up questions.

04:00:45 8 A Okay.

04:00:45 9 Q Earlier you testified that you gave Mr. Hadaway

04:00:49 10 the Miranda card to read to himself because you

04:00:53 11 wanted to make sure he could read. Do you

04:00:56 12 remember that testimony?

04:00:56 13 A I had him read it out loud to me.

04:00:58 14 Q And that was because you wanted to make sure he

04:01:01 15 could read; is that right?

04:01:01 16 A Yes.

04:01:01 17 Q Was that something you did for everybody you

04:01:04 18 interviewed after you read their Miranda --

04:01:08 19 read their Miranda warnings, or was that unique

04:01:10 20 to individuals that you wanted to make sure

04:01:12 21 they could read?

04:01:15 22 A I wouldn't say I did it all the time.

04:01:20 23 Q Did you have a reason why you would do it

04:01:25 24 sometimes and not other times or a practice?

04:01:30 25 A It was a practice that I picked up from some

04:01:33 1 other detectives when I was watching them and I  
04:01:36 2 liked it, so then I started using it.

04:01:39 3 Q Was there a reason -- was there certain  
04:01:43 4 situations that you chose to use it versus not  
04:01:46 5 use it?

04:01:47 6 A I didn't really consider it when I first  
04:01:51 7 started. It's something I just picked up  
04:01:54 8 around -- at some point.

04:01:58 9 Q Once you picked up that practice, did you do it  
04:02:00 10 with everybody you interviewed that was -- that  
04:02:03 11 you apprised them of their rights?

04:02:05 12 A I don't recall.

04:02:07 13 Q I guess what I'm trying to get at is was there  
04:02:12 14 anything that you had observed in your  
04:02:14 15 interactions with Mr. Hadaway or had been  
04:02:17 16 informed by other detectives in their  
04:02:19 17 interactions with Mr. Hadaway that made you  
04:02:21 18 want to make sure he could read?

04:02:25 19 A When reviewing the statement that I wrote, I  
04:02:30 20 had him follow along, and I wanted to make sure  
04:02:33 21 that, as he was following along, he could  
04:02:35 22 actually read what I was reading to him.

04:02:40 23 Q Why did you read it to him instead of having  
04:02:44 24 Mr. Hadaway read it to himself?

04:02:46 25 A That's what I do.

04:02:48 1 Q You do that for everybody?

04:02:49 2 A Yes.

04:02:49 3 Q Why do you do that?

04:02:53 4 A That's the way I -- that was the way I

04:02:57 5 operated.

04:02:58 6 Q Any particular reason --

04:02:59 7 A No.

04:02:59 8 Q -- for that being the reason why you operated

04:03:02 9 that way?

04:03:02 10 A That's what I liked to do. That's what I

04:03:05 11 thought worked good for me.

04:03:07 12 Q But you didn't have a particular reason, it

04:03:09 13 sounds like?

04:03:10 14 A No.

04:03:10 15 Q Because I thought earlier you would give people

04:03:13 16 the option to read it to themselves or have it

04:03:16 17 read to them and then they could -- they'd

04:03:19 18 write down which one happened?

04:03:21 19 A Well, I wanted to make sure that he was

04:03:23 20 actually reading what I had written down.

04:03:25 21 Q But did you sometimes give people the option to

04:03:29 22 read the statements you'd written to

04:03:32 23 themselves?

04:03:32 24 A No.

04:03:33 25 Q Okay. Have you, in your career with the

04:03:42 1 Milwaukee Police Department, ever investigated  
04:03:47 2 homicides that had a modus operandi or certain  
04:03:57 3 idiosyncratic circumstances that were being  
04:03:58 4 investigated as possibly victims of a serial  
04:04:03 5 killer?

04:04:03 6 A That I was involved in?

04:04:05 7 Q Yes.

04:04:11 8 A It would have been the prostitution homicides.

04:04:18 9 Q Other than the prostitution homicides, any  
04:04:20 10 other homicides that were investigated for a  
04:04:23 11 possible serial killer?

04:04:24 12 A Not that I can recall.

04:04:26 13 Q Okay. And I -- forgive me, but was the Jeffrey  
04:04:47 14 Dahmer, was that in your career as a detective?

04:04:50 15 A Yes.

04:04:50 16 Q Did you have any involvement in that case?

04:04:52 17 A I did not.

04:04:55 18 Q Okay. I forgot to ask you, did you know who  
04:05:03 19 Latonya Cooper is?

04:05:05 20 A No.

04:05:05 21 Q How about Denise Ball?

04:05:10 22 A No.

04:05:10 23 Q How about Stanley Hueble?

04:05:22 24 A No.

04:05:22 25 Q I forgot to ask you this. Were you trained as

04:05:32 1 an officer at the Milwaukee Police Department  
04:05:34 2 on any duties to disclose exculpatory  
04:05:40 3 information?  
04:05:42 4 A No.  
04:05:44 5 Q Okay. Do you have an understanding of the word  
04:06:00 6 "exculpatory" as you sit here today?  
04:06:01 7 A Yes.  
04:06:01 8 Q What's your understanding of it?  
04:06:04 9 A Evidence that could change the way a person is  
04:06:09 10 charged or if it can exonerate that person.  
04:06:16 11 Q Do you have an understanding of the word  
04:06:21 12 "inculpative"?  
04:06:22 13 A Not that much.  
04:06:23 14 Q You don't know what it means, inculpatory?  
04:06:26 15 A Inculpatory?  
04:06:27 16 Q Yeah.  
04:06:29 17 A No.  
04:06:29 18 Q Okay. This is Exhibit 26.  
04:06:54 19 (Exhibit No. 26 was marked.)  
04:06:54 20 BY MS. DONNELL:  
04:06:58 21 Q I'm handing you what I've designated as  
04:07:01 22 Exhibit 26 to your deposition. Do you  
04:07:03 23 recognize Exhibit 26? Have you seen it before?  
04:07:06 24 A I've never seen this before.  
04:07:07 25 Q Okay. This was produced in this litigation by

04:07:10 1 the City of Milwaukee as MPD SJH1434 through  
04:07:17 2 1445, and it includes what appears to be your  
04:07:27 3 in-service training curriculum, and then at the  
04:07:31 4 last page -- as well as specialized training,  
04:07:33 5 okay, for the first pages of it. Then the back  
04:07:35 6 page -- two pages is a Statement [sic] of  
04:07:36 7 Wisconsin Law Enforcement Standards Board  
04:07:40 8 Transcript of Recruit Course Completion for the  
04:07:43 9 Milwaukee Police Academy May 23rd, '77, to  
04:07:47 10 September 16th, 1977.

04:07:49 11 A Yes.

04:07:49 12 Q Have you seen these last two pages?

04:07:51 13 A No.

04:07:52 14 Q And you haven't seen any of the pages in  
04:07:54 15 Exhibit 26; is that right?

04:07:56 16 A No.

04:07:57 17 Q Okay. Do you see on -- it has the Bates stamp  
04:08:20 18 1443 -- there's a specialized training report  
04:08:24 19 for you? Do you see that?

04:08:36 20 A Yes.

04:08:36 21 Q And you see here it listed as a "New Detective  
04:08:39 22 Orientation" for 80 hours?

04:08:41 23 A Correct.

04:08:41 24 Q And this looks like you completed that between  
04:08:44 25 August 31st, 1990, and September 14th, 1990?

04:08:50 1 A Yes.

04:08:50 2 Q So did you attend the detective academy before

04:08:53 3 you became a detective in April '91?

04:08:56 4 A Yes.

04:08:56 5 Q And that was because you'd already taken the

04:08:58 6 test and it was -- you were going to be

04:09:00 7 promoted or probably going to be promoted?

04:09:02 8 A I was going to be promoted, correct.

04:09:05 9 Q Okay. And these last two pages -- or the very

04:09:09 10 last page of Exhibit 26 has your -- the hours

04:09:14 11 and subject matter from your police academy

04:09:17 12 training. Do you see that?

04:09:18 13 A Oh, I didn't see that.

04:09:19 14 Q Have you ever seen this before?

04:09:21 15 A No.

04:09:21 16 Q Okay. It looks like you were given various

04:09:37 17 categories of instruction, and then it says the

04:09:39 18 hours completed. So there was introduction,

04:09:43 19 fundamentals of human behavior, juvenile

04:09:47 20 procedures, police proficiencies, legal

04:09:48 21 principles, investigate -- crime investigation

04:09:51 22 and apprehension, traffic supervision, patrol

04:09:55 23 procedures, and administrative procedures, and

04:09:58 24 conclusion. Do you see that?

04:09:58 25 A Yep. Yes.

04:10:01 1 Q And it looks here that you were given in the  
04:10:08 2 crime investigation and apprehension, that  
04:10:12 3 there was interviewing techniques for two  
04:10:16 4 hours. Do you see that? It's under Category  
04:10:25 5 VI. I'm sorry, V. VI, yeah, crime  
04:10:28 6 investigation and apprehension.

04:10:34 7 A Okay.

04:10:35 8 Q Do you see that little section that says  
04:10:37 9 "Interviewing Techniques, Mandatory Hours: 2"?

04:10:41 10 A Yes.

04:10:41 11 Q Okay. But it looks like you -- it says that --  
04:10:52 12 we don't know, but it says the total hours  
04:10:55 13 completed, and it looks like 84 there, right?

04:10:58 14 A Yep. Yes.

04:10:58 15 Q But we don't know how many of that was for  
04:11:01 16 interviewing, right?

04:11:03 17 A No.

04:11:03 18 Q Does that refresh your recollection in any way  
04:11:05 19 of techniques you were trained on in  
04:11:08 20 interviewing at the academy?

04:11:10 21 A I don't have any current recollection, but this  
04:11:14 22 shows that I did attend some training.

04:11:19 23 Q Yep. I'm just asking if it refreshes your  
04:11:25 24 recollection in any way.

04:11:26 25 A No.

04:11:27 1 Q No. Okay. Going back to that May 22nd, 2003,  
04:11:50 2 DNA report and the June 5th, 2003, DNA report,  
04:11:56 3 Exhibits 21 and 22, do you remember those?  
04:11:58 4 A Yes.  
04:11:58 5 Q Do you, as you sit here today, have a belief  
04:12:02 6 about whether that information contained in  
04:12:04 7 those reports was exculpatory?  
04:12:09 8 A No.  
04:12:11 9 Q Meaning "No," you don't have a belief, or "No,"  
04:12:14 10 it wasn't exculpatory?  
04:12:16 11 A No, I don't have a belief.  
04:12:17 12 Q Okay. Do you have an understanding of whether  
04:12:21 13 that information should have been turned over  
04:12:24 14 to the prosecutor, Mark Williams?  
04:12:27 15 A I can't say that it wasn't.  
04:12:30 16 Q Fair. You can't say one way or the other,  
04:12:32 17 right?  
04:12:33 18 A Correct.  
04:12:33 19 Q Because you just don't remember, right?  
04:12:36 20 A Correct.  
04:12:36 21 Q My question's a little bit different. Do you,  
04:12:39 22 as you sit here today, think that information  
04:12:42 23 should have been provided to the prosecutor?  
04:12:47 24 A Yes.  
04:12:47 25 Q Why?

04:12:48 1 A Because it concerned a case that he had  
04:12:54 2 prosecuted.

04:12:55 3 Q Do you, as you sit here today, have an  
04:13:00 4 understanding that the information contained in  
04:13:02 5 those two DNA reports was exculpatory  
04:13:08 6 information for Mr. Hadaway?

04:13:12 7 A No.

04:13:13 8 Q You don't think it was exculpatory as to  
04:13:17 9 Mr. Hadaway?

04:13:18 10 A No.

04:13:18 11 Q How about with respect to Mr. Ott?

04:13:20 12 A No.

04:13:20 13 Q And can you explain for me why your answer is  
04:13:25 14 "No," that information is not exculpatory as to  
04:13:27 15 Mr. Hadaway and his conviction for the robbery  
04:13:32 16 of Ms. Payne?

04:13:34 17 A There was no indication that either one of them  
04:13:38 18 had sexually -- had any sexual contact with the  
04:13:42 19 victim.

04:13:45 20 Q Okay. And do you think -- well, so based on  
04:14:00 21 that, you think that that -- based on your  
04:14:03 22 belief that there was no evidence that  
04:14:05 23 Mr. Hadaway or Mr. Ott had sexual contact with  
04:14:08 24 Ms. Payne, then you don't think those DNA  
04:14:10 25 reports were exculpatory as to them; is that

04:14:15 1 right?

04:14:15 2 A Correct.

04:14:15 3 Q Any other reason?

04:14:17 4 A No.

04:14:18 5 Q Do you remember the Chaunte Ott case?

04:14:23 6 A Yes.

04:14:24 7 Q And other than communications with your

04:14:26 8 attorneys, do you have an understanding of how

04:14:29 9 that case was resolved?

04:14:32 10 A Yes.

04:14:32 11 Q And what's your understanding of how the Ott

04:14:35 12 case was resolved?

04:14:36 13 A The City paid him.

04:14:38 14 Q Okay. Do you have any opinions or feelings

04:14:43 15 about that?

04:14:45 16 A Yes.

04:14:45 17 Q What's that?

04:14:46 18 A I feel Chaunte Ott is guilty, and I feel Sam

04:14:49 19 Hadaway is guilty.

04:14:51 20 Q Okay. And can you tell me, as you sit here

04:14:57 21 today, what you base your belief on that Sam

04:15:01 22 Hadaway is guilty of the murder of Ms. Payne?

04:15:05 23 A I didn't say he's guilty of the murder.

04:15:08 24 Q I'm sorry.

04:15:09 25 A He's guilty of the attempted robbery of her.

04:15:12 1 Q Okay. And what's that based upon?

04:15:14 2 A Based upon his own statement, his own words.

04:15:20 3 Q And you understand the allegations in this case

04:15:25 4 is that Mr. Hadaway is alleging that he was

04:15:28 5 coerced into providing that statement and that

04:15:31 6 it was a false and fabricated statement, right?

04:15:34 7 A Yes.

04:15:35 8 Q Okay. And you -- well, how about Mr. Ott? Do

04:15:44 9 you think Mr. Ott, as you sit here today, is

04:15:45 10 guilty of the murder of Jessica Payne?

04:15:47 11 MS. GEHLING: Objection; relevance.

04:15:48 12 That -- that case is over. That has nothing to

04:15:51 13 do with this case. This case is about Sam

04:15:54 14 Hadaway, not about Chaunte Ott. He literally

04:15:56 15 just said it was settled, so what does it

04:15:58 16 matter what he thinks about it?

04:15:58 17 MS. DONNELL: But, yes, you

04:15:59 18 understand relevance isn't an objection, so he

04:16:00 19 said he --

04:16:00 20 MS. GEHLING: I do, but it doesn't

04:16:01 21 have anything to do with this case.

04:16:03 22 MS. DONNELL: Well, it does --

04:16:04 23 MS. GEHLING: It does not relate to

04:16:06 24 any admissible evidence because that case is

04:16:08 25 over and his feelings on what Chaunte Ott's

04:16:12 1 guilt is have nothing to do with this civil  
04:16:13 2 case -- either civil case at all.

04:16:14 3 MS. DONNELL: Okay. Well, I'm going  
04:16:15 4 to ask the question, and if you want to make  
04:16:18 5 your record, you can.

04:16:18 6 MS. GEHLING: That's fine.

04:16:19 7 MS. DONNELL: Okay.

04:16:19 8 BY MS. DONNELL:

04:16:19 9 Q So, again, you testified earlier that you think  
04:16:21 10 Mr. Ott is guilty of the murder of Ms. Payne,  
04:16:24 11 right?

04:16:24 12 A Yes.

04:16:25 13 Q And what is that based upon?

04:16:27 14 A Based on the statement of Sam Hadaway.

04:16:33 15 Q The statement that Sam Hadaway provided to you  
04:16:35 16 on October 27th, 1995?

04:16:38 17 A Correct.

04:16:38 18 Q Anything else?

04:16:43 19 A Some of Richard Gwin's statement also stating  
04:16:49 20 that Ott was with them in that location.

04:16:53 21 Q Anything else?

04:16:56 22 A Nope.

04:16:56 23 Q Okay.

04:17:15 24 MS. DONNELL: Okay. Thank you for  
04:17:16 25 your time today. I don't have any questions at

04:17:18 1 this time, but I don't know if your attorney  
04:17:20 2 has questions that I might want to follow up  
04:17:22 3 on.

04:17:22 4 EXAMINATION

04:17:22 5 BY MS. GEHLING:

04:17:23 6 Q I just have one question about Exhibit 12, if  
04:17:26 7 you can take it out, and it could be that I'm  
04:17:27 8 remembering your questions -- Attorney  
04:17:32 9 Donnell's questions incorrectly, but I -- when  
04:17:33 10 you were talking about it, I recall her asking  
04:17:38 11 if just the signatures were -- well, the  
04:17:42 12 handwritten statement was written by you,  
04:17:44 13 correct?

04:17:44 14 A Yes.

04:17:44 15 Q And then she asked if the only other  
04:17:47 16 handwriting on the -- on the paper was the  
04:17:50 17 signatures of Mr. Hadaway. Do you remember  
04:17:53 18 that --

04:17:53 19 A Yes.

04:17:53 20 Q -- conversation?

04:17:54 21 A Yes.

04:17:54 22 Q And you answered "Yes," right?

04:17:56 23 A Yes.

04:17:56 24 Q I just want to make sure, but there are also  
04:17:59 25 initials at the bottom of the page, "SH." Did

04:18:02 1 you write those?

04:18:03 2 A No, Mr. Hadaway did.

04:18:04 3 Q Okay. And there are a couple corrections on

04:18:11 4 Page -- like, at 3 of the -- Page 3 of 6. So

04:18:20 5 it's marked -- Bates marked 744 is the ending.

04:18:24 6 A Yes.

04:18:24 7 Q There's a correction on the fourth line.

04:18:27 8 A Correct.

04:18:28 9 Q I see there are two initials, two sets of

04:18:33 10 initials.

04:18:34 11 A The "CB" are mine, and the "SH" are Hadaway's.

04:18:41 12 Q Okay. And then is that similar for the

04:18:45 13 corrections that we see on Page 4? There are

04:18:49 14 one, two, three of them.

04:18:53 15 A Yes.

04:18:53 16 Q I believe.

04:18:55 17 A That would be correct.

04:18:56 18 Q And the same for Page 5? There's one -- one

04:19:04 19 that kind of goes from one line to the next.

04:19:06 20 A Yes.

04:19:06 21 Q Okay. And then -- and then the signatures that

04:19:13 22 appear on Page 1 and 6 are Mr. Hadaway's?

04:19:18 23 A Correct.

04:19:18 24 Q Okay.

04:19:19 25 MS. GEHLING: That's all. I just

04:19:20 1 wanted to make clear to everybody what was  
04:19:23 2 written on there.

04:19:24 3 MS. DONNELL: I don't have any  
04:19:24 4 further questions. Do you want to reserve  
04:19:28 5 signature?

04:19:29 6 MS. GEHLING: Yes, please.

04:19:31 7 MS. DONNELL: Okay.

04:19:31 8 THE VIDEOGRAPHER: Going off the  
04:19:32 9 record at 4:19.

10 (Proceedings concluded at 4:19 p.m.)

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1 STATE OF WISCONSIN )  
2 COUNTY OF MILWAUKEE ) SS:  
3  
4

5 I, SAMANTHA J. SHALLUE, a Registered  
6 Professional Reporter and Notary Public in and for  
7 the State of Wisconsin, do hereby certify that the  
8 above deposition of CARL BUSCHMANN was recorded by  
9 me on April 7, 2021, and reduced to writing under my  
10 personal direction.

11 I further certify that I am not a  
12 relative or employee or attorney or counsel of any  
13 of the parties, or a relative or employee of such  
14 attorney or counsel, or financially interested  
15 directly or indirectly in this action.

16 In witness whereof I have hereunder set  
17 my hand and affixed my seal of office at Milwaukee,  
18 Wisconsin, this 15th day of April, 2021.  
19  
20

21 \_\_\_\_\_  
22 Notary Public  
23 In and for the State of Wisconsin  
24  
25

My Commission Expires: June 3, 2023.

1 STATE OF )  
2 COUNTY OF ) SS:  
3 )

4 I, CARL BUSCHMANN, do hereby certify  
5 that I have read the foregoing transcript of  
6 proceedings, taken on April 7, 2021, at Brown &  
7 Jones Reporting, Inc., 735 North Water Street, Suite  
8 M185, Milwaukee, Wisconsin, and the same is true and  
9 correct, except for the list of corrections noted on  
10 the annexed page.

11  
12 Dated at \_\_\_\_\_  
13 this \_\_\_\_\_ day of \_\_\_\_\_, 2021.  
14  
15  
16 \_\_\_\_\_  
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CARL BUSCHMANN

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

Notary Public

My Commission Expires:

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